2 d
No trim Front
12 x

RECOMMENDATIONS REGARDING CONTROL OF OUTDOOR ADVERTISING ALONG THE INTERSTATE HIGHWAY SYSTEM IN GEORGIA

By

W. CARL BIVEN

and

ANDREW J. COOPER

Progress Report No. 1

Final Report

PROJECT B-235

Contract with the State Highway Department

of Georgia in Cooperation with the

Bureau of Public Roads

Engineering Experiment Station
Georgia Institute of Technology
Atlanta, Georgia
1962

GEORGIA INSTITUTE OF TECHNOLOGY
ENGINEERING EXPERIMENT STATION
ATLANTA 13, GEORGIA
September 13, 1962

State Highway Department of Georgia
Division of Highway Planning
Atlanta, Georgia

Attention: Mr. Roy A. Flynt
State Highway Planning Engineer

Subject: Progress Report Number 1, Project B-235 Highway Department Number HPS-1(62) "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia"

Gentlemen:

This report covers work from June 15, 1962 to September 1, 1962. During this period the general scope of the project has been developed, outlines of major portions of the report have been prepared, and preliminary drafts of certain sections have been written.

The following specific comments are made regarding various phases of the study.

Legal Problem of Outdoor Advertising Control.

The development of the law through precedent in state and federal courts has been examined in primary and secondary sources. Special library research has been done on the development of relevant legal concepts in the Georgia courts. This work is almost completed.

State Statutes on Outdoor Advertising.

An examination has been made of the practices of the various states in the control of outdoor advertising. This survey has included regulations prior to the adoption of the National Standards and regulations enacted in conformity with the National Standards.

The National Standards.

A careful examination of the National Standards has been made to clarify their precise meaning and the implications for any legislation that might be passed in Georgia.

Problems of Administration.

Consideration has been given to the administration of any legislation that may be enacted. This has included such items as a license and fee system and the cost of administration.

Future Work.

Interviews with parties interested in outdoor advertising regulation will be conducted. An examination of advertising control in Georgia municipalities will be made. The final report will be completed by not later than December 1, 1962.

Respectfully submitted,

W. Carl Biven
Project Director

Approved:

Thomas W. Jackson, Chief
Mechanical Sciences Division

FINAL REPORT

PROJECT NO. B-235
HPS-(62)

RECOMMENDATIONS REGARDING CONTROL OF OUTDOOR ADVERTISING ALONG THE INTERSTATE HIGHWAY SYSTEM IN GEORGIA

by

W. Carl Biven
Associate Professor of
Industrial Management

and

Andrew J. Cooper, III
Assistant Professor of
Industrial Management

Contract with the State Highway Department
of Georgia in Cooperation with the
Bureau of Public Roads

December 1962

Engineering Experiment Station
GEORGIA INSTITUTE OF TECHNOLOGY
Atlanta, Georgia

ENGINEERING EXPERIMENT STATION
of the Georgia Institute of Technology
Atlanta, Georgia

FINAL REPORT

PROJECT NO. B-235
HPS-(62)

RECOMMENDATIONS REGARDING CONTROL OF OUTDOOR ADVERTISING ALONG THE INTERSTATE HIGHWAY SYSTEM IN GEORGIA

by

W. Carl Biven
Associate Professor of
Industrial Management

and

Andrew J. Cooper, III
Assistant Professor of
Industrial Management

Contract with the State Highway Department
of Georgia in Cooperation with the
Bureau of Public Roads

December 1962

TABLE OF CONTENTS

FOREWORD

This report was prepared at the request of the Georgia Highway Department and financed jointly by the Georgia Highway Department and the Bureau of Public Roads, United States Department of Commerce.

Appreciation is expressed to the officials of the State and federal highway agencies for their cooperation. Thanks are also due to the highway authorities of many states who courteously forwarded materials used in this study. Special acknowledgment is made to Mr. Roy A. Flynt, State Highway Planning Engineer, for his patient assistance throughout the preparation of this report.

W. Carl Biven
Project Director

INTRODUCTION

Control of outdoor advertising has long been of concern to state, county, and municipal governments. Statutes and ordinances related to this activity have been common since early in this century. In the mid-1950's Congress took under consideration the advisability of control of outdoor advertising along the Interstate Highway System. It was felt by many that this unique network, 41,000 miles in length and connecting 90 per cent of the major urban centers, is essentially national in character and that the federal government should take the lead in encouraging uniform regulations designed to promote the safety, beauty, and maximum usefulness of the System.

The Federal-Aid Highway Act of 1958 is the result of this concern by Congress. Essentially it provides for a uniform system of control of outdoor advertising through voluntary adoption by the states of a set of billboard standards under federal encouragement. These standards include minimum spacing provisions and a limitation on the number, size, and types of billboards. The law establishes an incentive payment amounting to one half of one per cent of the cost of the Interstate Highway for those states entering into an agreement to abide by the National Standards promulgated by the Secretary of Commerce under the authority of the act.

The purpose of this study is to examine the feasibility of the adoption and implementation of the National Standards along the Interstate Highway System within the State of Georgia. The report is divided into four parts:

1. An examination of state regulation of outdoor advertising before and after the National Standards;
2. A legal analysis of outdoor advertising control;

3. A financial analysis of outdoor advertising control; and

4. Conclusions and recommendations.

I. STATE REGULATION OF OUTDOOR ADVERTISING BEFORE AND AFTER THE NATIONAL STANDARDS

State Regulations Prior To 1958

At the time of the passage of the Federal-Aid Highway Act of 1958 a sizable body of legislation existed dealing with billboard regulation on a state level. Every state had some form of legislation applying to outdoor advertising in 1958, although in some cases it constituted a bare minimum. The almost infinite variety in these statutes makes them cumbersome to summarize but the more common provisions will be outlined.[1*]

Sixteen states, including our sister states of Alabama, Florida, North Carolina, and Tennessee, required a license to engage in the business of outdoor advertising. Nineteen states required permits for outdoor signs. Fifteen states provided for a protected area measured by a specific distance in feet from the highway within which certain regulations applied. This varied from a distance of 15 feet, as in Florida, to a length of 750 feet in Vermont. In about half of the states these distances applied to all public roads or highways. In the other half they applied to expressways, parkways, or specifically identified drives. Four states had spacing requirements. Only Oregon had detailed restrictions. New Mexico and Vermont had provisions "directed at eliminating a row or series of signs advertising the same article or business."[2] Virginia had a statute dealing with billboards near an interchange on a controlled access route.

Protected area and spacing provisions represent the stricter forms

*Superscript numbers refer to citations listed at the back of this report.

of billboard control. A number of other miscellaneous regulations are commonly found. About two-thirds of the states prohibited signs obstructing vision in one way or another and signs resembling official markers. About a third of the states regulated structural specifications. A number of states had laws prohibiting such things as signs advertising illegal activities and signs with flashing lights.

Georgia Billboard Laws

In a survey of state statutes in 1958 the Illinois Legislative Council divided all states into two groups: states having more than minimal regulation and those with minimal billboard legislation. States falling into the first group were so classified on the basis that "they have enacted either considerable amounts of legislation, or some one particularly intensive control on the subject."[3] The states divide themselves about equally into the two groups.[4] Georgia is classified as having only "minimal regulation." Among our sister states, Alabama, Florida, and Tennessee were classified as having more than minimal controls.

Briefly Georgia laws forbid the imitation of official signs or signs designating railroad crossings, signs placed on the right-of-way of public roads, the placement of a sign on private property without the consent of the owner, and signs obstructing the view to any portion of a public road. The exact wording is as follows:

> "No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or any railroad sign or signal. . . . Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice." (Code, Sec.68-1616)

"It shall be unlawful to erect signs or any obstructions of any kind upon the right-of-way of any State highway, except those signs or obstructions as may be erected by authority of the State Highway Department. . . " (Code, Sec. 95-609)

"There shall be no signs of any description whatsoever erected or maintained within the right-of-way lines of the public roads of this State, except route markers, direction or warning signs which may be erected by or at the instance of the public road officials of this State, which officials shall include the State Highway Board and its representatives and the various county officials having charge of all public roads not included in the State-aid system." (Code, Sec. 95-2002)

"No person, firm, or corporation shall mar or deface, or in any way damage, any sign erected by the public road authorities as provided in the preceding section." (Code, 95-2003)

"No person, firm, or corporation shall erect, affix, maintain, or cause to be erected, affixed, or maintained any sign in imitation of or in the form of the road signs erected by public officials as provided in section 95-2002." (Code, 95-2004)

"No person, firm, or corporation shall erect, affix, or maintain any sign, device, or advertisement upon any private property without written permission of the owner or lessee of said private property, or of the agent of such owner or lessee. (Sec. 95-2005)

"No advertising sign, device, or display shall be erected, affixed, or maintained in any place or position where it obstructs a clear view from any public road in this State to any other portion of the said public road. Where any such sign, device, or display shall be erected, affixed, or maintained in a place or position where it so obstructs the view of such public road or roads, the official or officials in charge of such public road may order the removal of such sign or device by written notice to the party or parties so erecting, affixing, or maintaining; and if such party or parties shall not remove such sign or device within 30 days after such order of removal, such public official or officials may cause such sign or device to be removed; and the expense of such removal may be collected from the party or parties owning or controlling such device or display, in an action based on this provision and Chapter." (Code, Sec. 95-2006)

Georgia Municipal and County Ordinances

Sign and outdoor display regulations are quite common among Georgia cities. These are usually simple and limited in number. Protection of

districts zoned residential is widespread. Typically the only signs allowed are identifying nameplates, usually limited to one or two square feet in size, and signs in connection with the sale, lease, or rental of real estate, limited in size to eight or nine square feet.[5] Most ordinances place no limitations, or practically none, on signs in districts zoned commercial or industrial. Setback provisions for all signs or certain classes of signs are rather common. A few cities have a rather complete set of rules. A proposed zoning ordinance for Chatham County-Savannah, for example, has provisions regarding sight obstruction, signs that could be confused with traffic signals, wind pressure intensity specifications, size limitation, and the spacing of signs along the side of the street.[6]

As far as counties are concerned the General Planning and Zoning Enabling Act of 1957 should be mentioned.[7] A feature of this Act important to this study is the provision for planning and zoning in areas 500 feet wide on either side of any State or county highway.[8] Of all the counties through which the Interstate System passes, only Lowndes County, as far as could be determined, has any provision for control of billboards along the Interstate. The specific wording of the ordinance is as follows:

> "Separate use signs designed or placed to be seen principally from the travelled roadway of Interstate 75 shall be at least ten (10) feet from the right-of-way and no closer than one-thousand (1000) feet to another sign on the same side of the road, or to any entrance or exit ramp. Except that the Board of Appeals is authorized to grant a variance upon finding that a particular piece of property had less than one-thousand (1000) feet of frontage remaining in one ownership at the time of acquisition for right-of-way by the Highway Department and that the location of existing signs renders it impossible to maintain a spacing of one-thousand (1000) feet between signs. In no case, however, shall a variance be authorized which would place any sign nearer than one-thousand (1000) feet from any entrance or exit ramp."[9]

The Federal-Aid Highway Act of 1958

Introduction: The Interstate Highway System. The Federal Government first entered into a nationwide cooperative plan of highway improvement with the Federal-Aid Road Act of 1916. The current report of the Georgia Highway Department says:

> "A vital feature of the first Act was that the Federal Government was '. . . authorized to cooperate with the States through their respective State highway departments. . .' Since the Federal Highway Act of 1921 there has been a continuation of the cooperative Federal-aid Plan with initiative in the selection of the systems and the selection of projects resting with the State highway departments. The roads on the several Federal-aid highway systems are under the jurisdiction and control of the State or its political subdivisions and there are no Federal highways except those in Federal lands."[10]

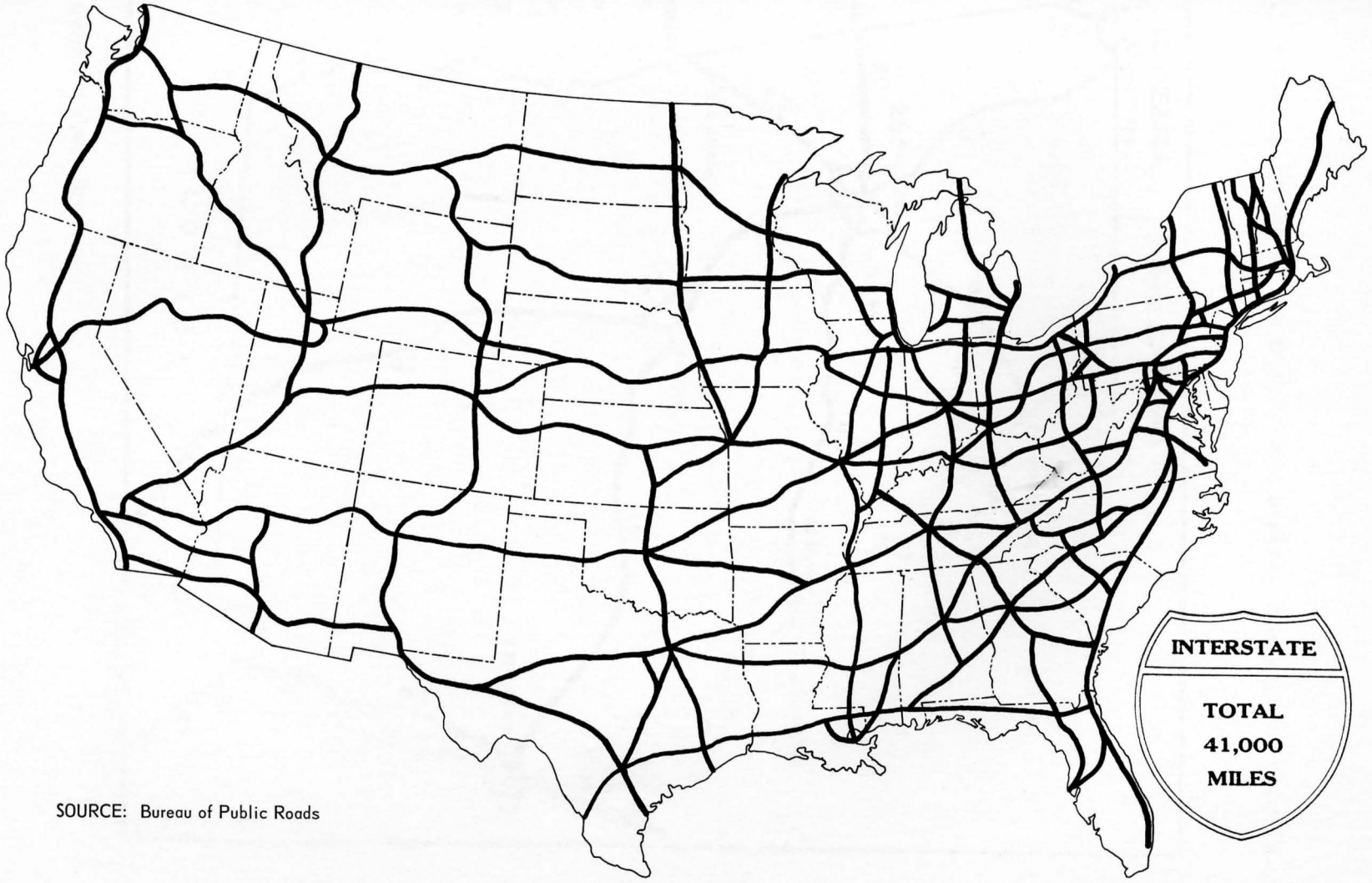
The Federal-Aid Highway Act of 1944 authorized the National System of Interstate and Defense Highways, the most recent achievement in state-federal cooperation. Designed for speeds up to 70 miles per hour, with controlled access along its entire length, the Interstate Highway is meant to be the backbone of the nation's highway system. Marked with the legend "Interstate" and carrying the same number for the full length of the route through several States or across the entire country, it is, in the fullest sense of the term, a unified national highway.

> "It connects, as directly as practicable, the principal metropolitan areas, cities, and industrial centers, serves the national defense, and connects with routes of continental importance in Canada and Mexico. It will link together 90 per cent of the cities having populations of 50,000 or more, as well as many smaller cities and towns. It will serve well over half of the rural population of the United States."[11]

In 1957 it was estimated to cost $700,000 a mile.[12] Among our nation's roads it is unique in character.

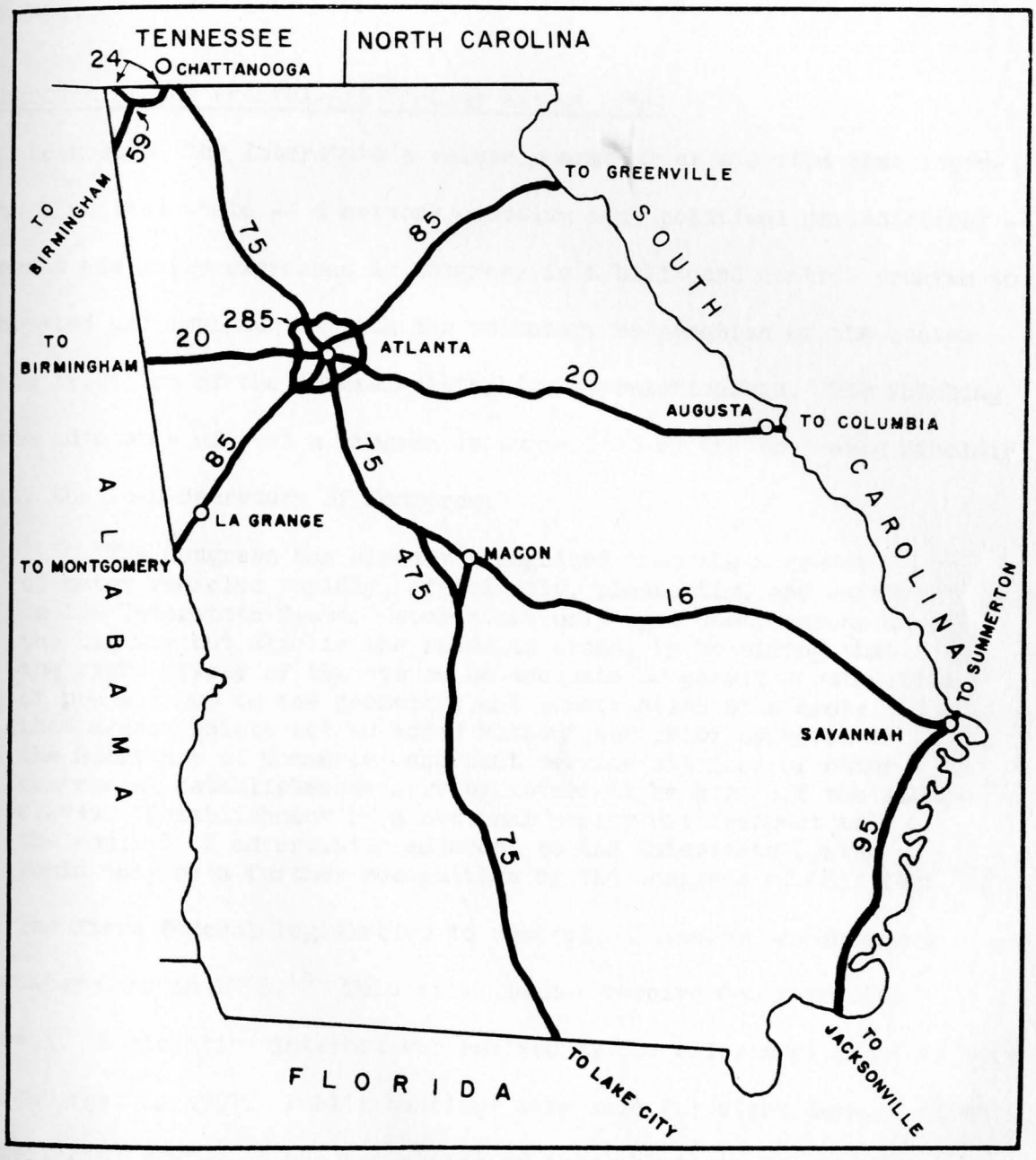
When completed approximately 1,108 miles of the Interstate System will be in Georgia. As of July 1, 1962, 139 miles were finished and

Figure 1. National System of Interstate and Defense Highways.



SOURCE: Bureau of Public Roads

Figure 2. National System of Interstate and Defense Highways in Georgia.



SOURCE: Georgia Highway Department

under traffic. On the same date there were 16,478 miles of highway of all types in the State highway network. The planned total mileage of Interstate represents, therefore, about 7 per cent of the total miles of State highways.

Background of the Federal-Aid Highway Act of 1958

Because of the Interstate's unique character as a system that represents a unified whole -- a network crossing many political jurisdictions -- interest was early expressed in Congress in a billboard control program to be created and implemented with the voluntary cooperation of the states in the tradition of the federal-state highway relationship. The thinking of the advocates of such a program is summarized by the Honorable Sinclair Weeks, the then Secretary of Commerce:

> "The Congress has already recognized that the movement of motor vehicles rapidly, efficiently, pleasantly, and safely on the Interstate System depends not only upon what happens on the highway but also in the roadside areas, by requiring that the right-of-way of the system be adequate to permit construction of projects up to the geometric and construction standards; that access points not be added without the prior approval of the Secretary of Commerce; and that service stations or other commercial establishments serving motorists be kept off the right-of-way. Establishment of a national policy with respect to the control of advertising adjacent to the Interstate System would only be a further recognition by the Congress of this fact."[13]

The first federal legislation to control billboards was proposed by Senator Gore in 1955.[14] This bill did not receive Congressional approval. Legislative interest was revived by the efforts of Senators Gore and Neuberger in 1957. Public hearings were held for eight days.[15] Even a superficial review of the transcript of these hearings immediately suggests the intensity of feelings generated by the billboard controversy.

Prominent among the supporters of this legislation were the nation's local and federated garden clubs and the various automobile associations; opposing it were the organized outdoor advertising industry and various roadside groups including restaurant and motel associations. "The lobbying activities carried on by the various interests would furnish excellent material for a study of pressure group tactics."[16] Legislation failed to pass in 1957, but in 1958 the first nationwide, federally-sponsored bill on outdoor advertising control was adopted by both houses and signed by President Eisenhower on April 16, 1958.[17]

Interested Parties. Among the signs that appear at roadsides are those that might be termed "random".[18] These are posters, frequently irregular in shape and amateurish in design, that are erected by individuals who are not specialists in highway promotion. This category of signs is usually the most difficult to police.

The professionally designed billboard, with which the highway traveler is familiar, is the product of a highly organized industry.[19] Its organizational structure has been summarized as follows:

> "The most widely known organization is the Outdoor Advertising Association of America, Inc., trade association of the industry, which has been instrumental in developing standardized practises, facilities and structures. The O.A.A.A. has instituted studies in several leading universities on the effective placement of advertising and on wind pressure. . . . Seven hundred and seventy-six companies, or approximately ninety-five per cent of the industry, belong to the O.A.A.A.
>
> "Outdoor Advertising Incorporated, which is owned and supported by a large majority of the outdoor advertising companies, is the national sales and promotion organization for the industry. In addition to a main office in New York City, O.A.I. maintains eleven branch offices in other principal cities.
>
> "The National Outdoor Advertising Bureau, Inc., a non-profit cooperative organization, is owned by a number of leading advertising

agencies. Its function is to sublet national coverage contracts to the member companies throughout the country and, by means of field representatives, to assure the proper fulfillment of the contracts.

"The Traffic Audit Bureau, Inc., is sponsored jointly by the O.A.A.A., the Association of National Advertisers, Inc., and the American Association of Advertising Agencies. This bureau furnishes traffic surveys to advertising companies so that they will be able to know the 'circulation' of their billboards.

"These four organizations have elevated the position of the billboard from an instrument of local display to an important element in a nationwide advertising campaign."[20]

Though representatives of the industry testified at the public hearings in 1957 "that outdoor advertising, at least by the organized outdoor advertisers, constitutes something less than 2 per cent by dollar volume of the expenditures for advertising in the United States,"[21] at the same time, total industry sales are substantial. These were estimated to be in excess of $200 million in 1956.[22] In 1961 the industry's ten largest national accounts - including firms like General Motors Corporation and the Coca-Cola Company - were reported to total almost $35 million.[23] The outdoor advertising industry sells "coverage" rather than space. The amount of traffic passing a sign and the number of travelers seeing the display are measures of its value. This being the case, the industry can hardly be indifferent to regulation of billboards on the Interstate System with its high volume of traffic.

Local businesses directly serving the traveling public, especially motels and restaurants, depend to an unusual degree on outdoor advertising for promotion. The very nature of their operation makes it impossible to use advertising media - radio, television, newspapers - available to other types of business. Billboards on the highway or signs on the premises are the only point of contact between the firm and its

specialized market, highway traffic. The National Standards promulgated under the authority of Federal-Aid Highway Act of 1958 give recognition to this problem by restricting the use of the spaces allowed on the Interstate System to economic activities situated within a twelve mile radius of the billboard location.

Provisions of the Act

Section 12 of the Federal-Aid Highway Act of 1958 bears the title "Areas Adjacent to the Interstate System" and sets forth the policy of the government with respect to advertising displays along these highways. The express purpose of the controls envisioned in the legislation is contained in the following excerpt from the law.

> "To promote the safety, convenience, and enjoyment of public travel and the free flow of interstate commerce and to protect the public investment in the National System of Interstate and Defense Highways, it is hereby declared to be in the public interest to encourage and assist the States to control the use of and to improve areas adjacent to the Interstate System by controlling the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to that system."[24]

It might be emphasized that the federal law does not in and of itself establish a system of control upon the use of outdoor advertising along the Interstate System; this decision rests solely with the individual states. The purpose of the federal statute is to encourage the states to undertake such measures and to assure that some degree of uniformity is achieved should the states decide to do so.

Consistent with the purpose stated above, and in a more specific vein, the act continues with a declaration of the national policy regard- the erection and maintenance of outdoor advertising devices.

"It is hereby declared to be a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within six hundred and sixty feet of the edge of the right-of-way and visible from the main-traveled way of all portions of the Interstate System constructed upon any part of right-of-way, the entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary (of Commerce). . ."[25]

Two observations may be made at this point. First, the choice of a protected area 660 feet in width on either side of the right-of-way is, of course, to some extent arbitrary. However, those states which had previously instituted advertising controls had established a protected area which varied widely up to a figure of 750 feet. The choice of 660 feet--one-eighth of a mile--is a compromise, a distance which is easily measured on engineering maps. Second, any portion of the Interstate System which is built upon right-of-way acquired prior to July 1, 1956, is specifically excluded from the operation of the National Standards relating to outdoor advertising. In Georgia, approximately 43 miles of a total of 1,108 fall within this category. This provision of the law appears to be related to the fact that direct participation by the federal government in the construction of the Interstate System dates from the passage of the Federal-Aid Highway Act of 1956--which was approved on June 29, 1956.

The Federal-Aid Highway Act of 1958 continued by specifying the types of signs which could be placed within the area of control. These permissible signs fall within four categories.

(1) Directional or other official signs or notices that are required or authorized by law.

(2) Signs advertising the sale or lease of the property upon which they are located.

(3) Signs erected or maintained pursuant to authorization or permitted under state law, and not inconsistent with the national policy and standards of this section, advertising activities being conducted at a location within twelve miles of the point at which such signs are located.

(4) Signs erected or maintained pursuant to authorization in state law and not inconsistent with the national policy and standards of this section, and designed to give information in the specific interest of the traveling public.[26]

The necessity for Class 1 signs is obvious and their description is self-explanatory. Brief comments, however, will be made regarding the description of the remaining three classes of signs.

The Federal-Aid Highway Act of 1958 defines Class 2 signs as those "advertising the sale or lease of the property upon which they are located." This definition has been expanded, however, in the National Standards or Code of Federal Regulations as actually drawn up by the Secretary of Commerce.[27] In addition to the type of sign sanctioned in the law, the National Standards include all "on premise" signs within the group of Class 2 signs. Class 2 signs are defined therein as,

"Signs not prohibited by state law which are consistent with the applicable provisions of this section and Section 20.8 and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located."[28]

Thus the category of Class 2 signs includes the advertisement of activities being conducted upon the property upon which the sign is located in addition to signs announcing the sale or lease of that property.

Probably the majority of all existing outdoor advertising signs will fall within the categories of Class 3 and Class 4. The description of permissible signs within both of these groupings is so worded as to give recognition to the fact that some states have already enacted legislation

which prohibits certain forms or methods of outdoor advertising. The description of Class 3 signs, however, is particularly restrictive. Both the Act and the National Standards promulgated thereunder define Class 3 signs as those advertising activities which are conducted within a radius of twelve miles of the location of the sign.

This stipulation has far-reaching implications, and considerable controversy has arisen over it. Its effect would be to exclude in some instances, and seriously restrict in others, the advertisement of brand-name merchandise. Thus while containing an element of discrimination, it may also be argued that this provision nevertheless assures that the available advertising locations will be assigned to those business firms most immediately concerned with achieving contact with the public traversing that particular section of highway, namely, motels, restaurants, and automotive service facilities.

This comment is appropriate also in the case of Class 4 signs--those "designed to give information in the specific interest of the traveling public." Therefore it is important to note that neither the Federal-Aid Highway Act of 1958 nor the National Standards which have been promulgated under its authority actually contemplate a prohibition of outdoor advertising along the Interstate System. Rather they specifically reserve this privilege to those individuals and business firms whose interest is most closely tied to the motoring public.

As noted previously, the Federal-Aid Highway Act of 1958 authorized the Secretary of Commerce to draw up a code of regulations regarding the control of outdoor advertising along the Interstate System. These National Standards are reproduced in an appendix to this report, but a

brief description of certain of their major provisions will be inserted at this point.

The National Standards repeat some of the material included in the law itself, particularly those provisions relating to the purpose and intent of the regulations and the four classes of permissible signs, topics which have been discussed above. They also include a section setting forth explicit definitions of the terms used in the Act and in the Standards themselves. In additon the Standards prescribe certain requirements relating to the spacing of signs, their size limitations, their physical characteristics, the use of trade-names, and the use of "informational sites" which are optional at the discretion of the individual states. Each of these latter items will be discussed briefly.

Spacing. The National Standards set forth a detailed specification of spacing requirements to be observed in the location of outdoor advertising signs. Essentially these specifications relate to the clasification of sign under consideration and to the proximity of a particular stretch of highway to an interchange. For example, no Class 3 or Class 4 signs are to be permitted within two miles of an exit roadway. The rationale for this restriction would seem to be that this area should be reserved for directional signs (Class 1) and that any other signs might possibly lead to confusion or distraction on the part of the motorist. Again, on stretches of the highway more than five miles removed from an exit roadway, an average of one sign per mile is permitted. In terms of a traffic flow of 60 miles per hour, this requirement would allow the motorist to be confronted with an advertising sign not more often than

once every minute. Undoubtedly the concept of driver-distraction as it relates to highway safety is pertinent in this instance.

Size Limitations. The Standards restrict the size of Class 3 and Class 4 signs to an area not to exceed 150 square feet, with a limitation of 20 feet in length, width, or height, including border and trim. Class 2 ("on premise") signs are also subject to this limitation except when located no more than 50 feet from the activity which they advertise. The purpose of the size limitation appears to be the prevention of exceptionally large signs, although the exemption of certain Class 2 signs is to some extent arbitrary.

Physical Characteristics. The National Standards prescribe certain physical characteristics to be observed in the case of Class 2, Class 3, and Class 4 signs. These include restrictions with respect to lighting and a specific prohibition of signs which utilize moving parts, signs nailed to trees or painted upon rocks, signs which obscure the vision of the motorist in connection with approaching or merging traffic, signs which block a view of official or directional signs, and signs which imitate or resemble official traffic signs or devices. A number of states already have legislation in force which is consistent in substance with these provisions.

Use of Trade-names. The effect of the National Standards upon the advertisement of brand-name merchandise was noted previously. Actually the Standards do not impose an outright ban on the use of trade-names, but they do restrict their use considerably. The Standards specifically exempt Class 2 signs located within 50 feet of the activity advertised thereon from any restirction on the use of trade-names. However all

Class 2 signs located further than 50 feet from the advertised activity and all Class 3 signs are subject to such a restriction. A business firm, for example, which qualifies for a sign under the Class 3 category (i.e., a firm located no more than twelve air miles from the sign) may use a trade-name in its advertisement, but only if the name of the business firm is displayed as conspcuously as the trade-name also appearing on the sign. On the other hand, a firm which qualifies to erect a sign under the Class 4 category (signs in the specific interest of the traveling public) may use a trade-name subject to no relative size limitation, provided the trade name itself qualifies as one associated with the interest of the traveling public (e.g., a gasoline brand-name). All other types of trade-names are prohibited in the Class 4 sign category. Thus it can be seen that the advertisement of brand-name merchandise is not prohibited per se; rather the advertisement of such merchandise is subordinated to the advertisement of the activities of those firms actually conducting business within the immediate vicinity of the highway and those which handle brand-name merchandise which is directly related to the motoring needs of the public.

Informational Sites. The National Standards provide that the States, at their discretion, may construct what are known as "informational sites," areas adjacent to the highway and in which a large multi-panel signboard may be erected providing space for a great number of Class 3 and Class 4 signs. Such signs are not to be visible from the highway itself; the motorist must actuallly leave the highway and enter an enclosed area from which the signs may be seen. The use of these informational sites is

subject to considerable controversy. Those who advocate the construction of such sites point to the fact that they solve one of the major problems involved in space allocation, the problem of how to deal equitably with a situation in which there are more eligible advertisers than spaces available along the highway. Critics of the device, however, advance the hypothesis that few motorists are willing to leave the main-traveled highway in order to see what may be found in an informational site and that the dangers which may lurk in such areas at night tend to destroy their possible usefulness. Prior to making any specific recommendation on this point, it may be worthwhile to point out that the decision of whether or not to construct such sites rests solely with the states. Informational sites are not mandatory under the National Standards.

The intent of the preceding discussion of the National Standards has not been to provide a comprehensive analysis of their provisions but rather to reveal their objective and to indicate certain of the specific means by which they seek to attain it. The Federal-Aid Highway Act of 1958 authorized the Secretary of Commerce, not only to draft such Standards, but also to enter into agreements with the highway departments of the various States whereby these Standards were to be enforced. Any such agreement, as noted earlier in this section, does not apply to those portions of the Interstate System which are to be constructed upon right-of-way acquired prior to July 1, 1956. The Act of 1958 also provided that,

> "Upon application of the State, any such agreement may, within the discretion of the Secretary of Commerce, consistent with the national policy, provide for excluding from application of the national standards segments of the Interstate System which traverse incorporated municipalities wherein the use of

real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use is clearly established by State law as industrial or commercial. . ."[29]

The Act was amended in 1959 to remove the element of discretion. This section of the law now reads as follows:

"Agreements entered into between the Secretary of Commerce and State highway departments under this section shall not apply to those segments of the Interstate System which traverse commercial or industrial zones within the presently existing boundaries of incorporated municipalities wherin the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use, as of the date of approval of this Act (September 21, 1959), is clearly established by State law as industrial or commercial. . ."[30]

Therefore any agreement between the Secretary of Commerce and a state highway department calling for the acceptance and enforcement of the National Standards does not apply to those segments of the Interstate System which (1) are constructed upon right-of-way acquired prior to July 1, 1956, (2) traverse areas which have been zoned as commercial or industrial and which lie within the presently existing boundaries of incorporated municipalities having such zoning authority, and (3) traverse other areas in which the State has clearly established land use as industrial or commercial.

In order to induce the states to enter into agreements with the Secretary of Commerce calling for the enforcement of the National Standards, the Federal-Aid Highway Act of 1958 provided that the federal share of the total cost of construction be increased from 90 to 90.5 per cent -- applicable only to those segments of the Interstate System subject to the operation of the National Standards. Should the state incur additional costs in implementing the Standards, such as the purchase of advertising easements,

the additional expenses are to be treated as part of the total cost of construction and are subject to the 90-10 division, provided that federal reimbursement to the state shall be made only with respect to that portion of such cost which does not exceed 5 per cent of the cost of the right-of-way for the project. These latter costs are not eligible for the additional half of one per cent from the federal government, however.[31]

The additional half of one per cent is to be paid from the general funds of the Treasury and not from the Highway Trust Fund. It is of interest to note that the Department of Commerce Appropriations Act for 1963[32] contains an appropriation of 2 million for bonus payments to those states which have entered into agreements with the Secretary of Commerce to control outdoor advertising in areas adjacent to the Interstate System. The present deadline for entering into these agreements is June 30, 1963.[33]

Adoption of the National Standards by the States

At the time of this writing sixteen states have signed contracts with the Secretary of Commerce agreeing to adopt the National Standards. The sixteen states are: Connecticut, Delaware, Hawaii, Kentucky, Maine, Maryland, Nebraska, New York, North Dakota, Ohio, Oregon, Pennsylvania, Vermont, Washington, West Virginia, and Wisconsin. Since it is the purpose of the Highway Act of 1958 to bring about a uniform policy with regard to advertising on the Interstate Syste, it is not surprising that the regulations adopted by the sixteen states are basically alike. For the most part the states have simply drafted the detailed National Standards into law with regard to the classification of signs, depth of the protected area, and spacing. However, nothing prevents a state from passing stricter

regulations than those provided for in the federal standards; in addition, no provision is made for uniformity in administration. Consequently there is a considerable diversity in the provisions of the sixteen states in this regard. Some of the more important details are here summarized.

Administrative Agency. Responsibility for administration is typically assigned to the state highway department. In a few cases a specific division within the department is also designated. In Ohio, for example, it is the Division of Right-of-Way. In two states responsibility is not assigned to the highway department. In Oregon the administrative agency is the Bureau of Labor; in Vermont, the Secretary of State.

Purchase of Advertising Rights. Six states make provision for the purchase of easements. They are: Connecticut, Delaware, Maryland, Nebraska, North Dakota, and Pennsylvania.

Depth of Protected Area. All states must protect the roadside area to a distance of 660 feet. Vermont has extended this to 750 feet. Five states apply the 660 feet rule to all controlled-access highways, whether in the Interstate System or not. A sixth state, Maine, has a 500 feet rule for turnpikes not a part of the Interstate.

Information Sites. Only five states provide for the erection of information sites.

Permits, Tags, Licenses. Almost all of the states (12) require a permit to be obtained before a sign is erected. In all cases it is effective for only one year. For the most part the other four states do not require a permit simply because they do not allow Class 3 and 4 signs at all. Vermont is an example. Seven states require an identification tag to be placed on the sign. This usually has printed on it the number

of the permit and the name of the person or firm erecting the sign. Seven states also require an outdoor advertising firm operating within the state to obtain a license.

Inspection System. The majority of states do not provide for a formal inspection system. Apparently it is simply assumed that district maintenance engineers will report billboard violations as a normal part of their duties. Two states, Maryland and Nebraska, require district engineers to make an inventory of all signs every three months and to file a formal report. Ohio has a detailed plan for reporting violations through organizational channels.

Penalties. Almost all of the states provide for a penalty for violations. This consists of a fine or imprisonment or both. In only one case, Ohio, is the maximum fine in excess of $500. The median fine is roughly in the range of not less than $25 and not more than $500. Fewer states provide for imprisonment and the median penalty is for one-to-three months.

Nonconforming Use. Only two states allow in their statutes and regulations for a period of tolerance for the purpose of amortization of the billboard investment. Kentucy and Oregon allow a five year period for signs constructed prior to a specified date. However, it is a standard procedure for the contract between the state and the Department of Commerce to allow signs erected prior to July 1, 1961--the original deadline for participation in the national program--to remain for three years, that is, until July 1, 1964. Presumably for contracts signed under the new deadline, June 30, 1963, the toleration period will end on July 1, 1966.

Method of Allocating Spaces. One of the really difficult problems of administration is to devise a plan for allocating a limited number of spaces in an equitable way. Only three states make formal provision for this in their regulations. Oregon, Washington, and Wisconsin provide that a permit for an eligible sign location shall be issued to the first applicant to submit a satisfactory application. Oregon and Washington, however, give first preference in the granting of permits for Class III and IV signs to state, county, municipal, and federal agencies.

II. PROBLEMS OF REGULATION: A LEGAL ANALYSIS

Introduction

Whatever one's feelings about the desirability of signs along the public highway, it must be recognized that the legal problems of regulation are complex and their solution uncertain. A practical objection to outdoor advertising does not necessarily constitute a legal objection. In the history of the regulation of the industry the most difficult problem has been to find a basis for control that will meet the test of constitutionality. The state, attempting to regulate advertising in the public interest, presses against the claims of abutting landowners and the advertising industry. A half-century of decisions reflects the effort of the courts to maintain a proper balance betwwen the rights of individuals having an interest in outdoor advertising and the claims of the general public.

Organized outdoor advertising, though subject, like any business, to regulation, is recognized as a legitimate business. As such, it can rightfully expect to be protected against unreasonable restriction. In addition any legislation regulating billboards that represents more than minimal control extends the area of regulation beyond the state-owned right-of-way. The National Standards, as promulgated by the Department of Commerce under the authority of the Federal-Aid Highway Act of 1958, specifically provides for an area of control 660 feet to either side of the right-of-way. Regulation is extended to the land of abutting owners. Real property law, then, becomes a crucial matter in the question of such regulation.

Outdoor Advertising and Property Rights

A survey of court decisions indicates that the position of the abutter, in terms of precise legal definition, is not completely clear. Early decisions refer to the advertising right as a property right.[34] Clearly the advertising right is based, in the first instance, on the right of the owner to do with his property whatever he chooses. In addition it is related to the right of visibility, the right to be seen from adjacent property. This is only one of several, clearly established rights incidental to ownership of real property adjacent to the public road. Others include right of access, light, and air. These rights of the abutting landowner are so fundamental that they have their roots in common law. As one opinion has stated:

> "There are . . . two classes of rights, originating in necessity and in the exigencies of human affairs, springing up coeval with every public highway, and which are recognized and enforced by the common law of all civilized nations. The first relates to public passage, the second, subordinate to the first, but equally perfect and scarcely less importnat, relates to the adjoining owners. Among the latter is that of receiving from the public highway light and air.
>
> "In the first place, has not the adjacent owner upon the . . . ordinary public highway, of common right the privilege of receiving from it light and air? Universal usage is common law. What has this been? Men do not first build cities, and then lay out roads through them but they first lay out roads, and then cities spring up along their lines. As a matter of fact and history, have not all villages, towns and cities in this country and in all other, now and in all times past, been built upon this assumed right of adjacency? . . . It is a right founded on such urgent necessity that all laws and legal proceedings take it for granted."[35]

In the language of real property the right of visibility is an easement.[36] An easement has been defined as a right in the owner of one parcel of land, by reason of such ownership, to use the land of

another for a special purpose not inconsistent with a general property in the owner.[37] Again it has been defined as a liberty, privilege, or advantage without profit, which the owner of one parcel of land may have in the lands of another.[38] In discussions of easements the expressions "dominant estate" and "servient estate" appear. As the terms suggest, the former is the estate having a claim against another; the latter, the estate against which the claim exists. In the terminology of easements the public road is the servient estate burdened with the easement of visibility. The owner of land adjacent to the highway cannot be regulated in the use of his land regarding advertising, if this involves a "taking" of his property rights, in the legal sense of the term, without due regard to the constitutional protection contained in the due process clauses.

One argument suggested for a legal defense of regulation begins with the fundamental question of whether or not such regulation does, in fact, violate property rights when the law of easements is applied to the matter.[39] There are two general types of easements, easements appurtenant and easement in gross. The former is appurtenant to the land. It represents a claim which one estate, the dominant estate, has on another, the servient estate. It is an incorporeal right, a hereditament; it adheres in the land. An easement in gross represents a claim held by a person against land. In this case there is no dominant estate, only a servient estate. An easement appurtenant is irrevocably such and cannot be changed to an easement in gross.[40] Also it is clear that an easement appurtenant can only be used in connection with the dominant estate.[41] An example of this last mentioned characteristic of easements appurtenant is presented in Chase v. Cram.[42] In this case the court ruled that the right to take

water, "as occasion may require," from adjoining property pertained only to the use of the water on the dominant estate and that bottling the water for sale was not permitted.

It is argued that the right of visibility is clearly an easement appurtenant. Since such an easement operates for the benefit of the dominant estate there is no doubt that a property owner has the right to promote, through advertising, activities engaged in on the dominant estate. However, since an easement appurtenant cannot be separated from the land or transferred to another for a use other than that to which the dominant estate itself is dedicated, there is no constitutional right protecting billboards promoting activities not conducted on the abutting land. This reasoning has been summarized as follows:

> "An easement necessarily constitutes a burden on the servient estate. Use for the benefit of the dominant estate is the lawful limit of that burden -- in the absense of any other and stricter limitation . . . The right of visibility is then one of the rights that the law gives in order to promote the development and improvement of land bordering on public ways. It is a right appurtenant to such land, apart from which it cannot be owned and for the benefit of which alone it can be lawfully exercised."[43]

Only the Supreme Court of Vermont has accepted this line of reasoning.[44] In that case the court upheld the constitutionality of a statute prohibiting billboards within 240 feet of the highway on the basis that the advertising right is not transferable. Other courts have chosen to ignore this thesis. It has also been specifically rejected.[45] It is probable that Vermont will remain the exception in denying the right of property owners to lease land for advertising purposes. The Federal-Aid Highway Act of 1958, itself, "gives implied recognition to the existence of the advertising right by allowing federal funds to be used for the purchase of advertising rights."[46]

Accepting, then, the recognition by most courts of the right to lease land for advertising along the road as a legitimate property right, there are two ways in which a state could proceed in a program of control. It could purchase advertising easements from the owners of the strips of land to be controlled along the right-of-way and engage in condemnation proceedings under the right of eminent domain. Or it could regulate advertising within the area of control desired by exercise of the state's police power without compensation to abutting landowners. It is the latter method that is more frequently used by states and the one that requires a thorough discussion.

Outdoor Advertising and the Police Power

The right of private property is not an absolute one; it can be regulated for the good of society. The power to regulate is based on the police power. When regulation is necessary for the promotion of public health, safety, morals, comfort and the general welfare, individual rights must give way and the owner is not entitled to compensation. The usual procedure in outdoor advertising legislation is to declare the offending signs to be a nuisance and subject to removal. Although the police power must be balanced against individual rights, for example, private property and freedom of speech, it is a broad power and to be interpreted as such. It is dynamic in its application.

> "Since the police power is based on public necessity it is not limited to conditions as they exist at any one particular time, and it is capable of expanding or contracting to accord with increased or decreased needs on the part of the public in particular spheres of regulation."[47]

Nevertheless exercise of this power must meet the criteria for valid application, the necessity of the general welfare. If the police power is

exercised without the general welfare, in fact, requiring it, then the regulation involves a restriction of property without due precess of law or a "taking" without just compensation. Whether or not the facts of the case show that the purposes for which the police power is invoked are met in reality is a matter subject to judicial review. The crux of most cases involving the control of outdoor advertising has been just this: do the regulations represent a control necessary for the public health, safety, morals, comfort, and the general welfare, and, therefore, a valid exercise of the police power; or do they represent a case in which the necessity of the public welfare proclaimed is fictional and in which, therefore, the enforcement is an invalid exercise of the police power and a violation of constitutional rights?

The development of the law has been in the direction away from a stringent and narrow interpretation of the police power to the acceptance of a broader basis for the upholding of legislation controlling outdoor advertising. This development has been uneven across the various jurisdictions in the country and the definitive opinion has yet to be given. The earliest cases arose in connection with municipal regulations before intensive use of highways became common. In these early decisions ordinances against unsafe structures were upheld but the courts declared regulation that went beyond this to be unconstitutional. Specifically courts refused to recognize aesthetics as a valid basis for the exercise of the police power.[48] The traditional reasoning of the courts in refusing to recognize aesthetics as a proper basis is reflected in Passaic v. Paterson,[49] an opinion much quoted in later cases:

"Aesthetic considerations are a matter of luxury and indulgence rather than necessity, and it is necessity alone which justifies the exercise of the police power to take private property without compensation."

St. Louis Gunning Co. v. St. Louis[50] is a landmark in billboard decisions in that it broadened the basis for regulation and set criteria for valid billboard control. The ordinance in question did not forbid billboards entirely but regulated the dimensions, distance from the ground, and setback from the street. City officials argued that billboards were being used as hiding places for robbers and persons engaged in illicit acts, that they were a cause of the collection of debris, and a source of unsanitary conditions and offensive odors. The court accepted the existence of such conditions and upheld the ordinance on the basis of safety, morality, and sanitation. Succeeding courts, reluctant to reject the precedence regarding aesthetics set by earlier decisions, looked to the broad criteria established in the St. Louis Gunning Co. case for upholding billboard control legislation. On this basis regulations regarding location, distance from street and highway, and size have been approved by courts.[51] The requirement that outdoor advertisers obtain a license[52] and a permit to construct advertising structures has also been approved.[53]

Aesthetics and Recent Decisions. At the same time a substantial view has been developing giving open recognition to aesthetics as a valid basis for regulation. Thus in the General Outdoor Advertising Co. v. Indianapolis[54] case, the court stated:

"Under a liberalized construction of the general welfare purposes of State and Federal Constitutions there is a trend in the modern decisions (which we approve) to foster under the police power, an aesthetic and cultural side of municipal development -- to prevent a thing that offends the sense of

sight in the same manner as a thing that offends the sense of hearing and smelling."

In some decisions this has involved a recognition of aesthetics for exercise of the police power only when combined with other considerations.[55] But there is also a growing minority view which considers aesthetics, as such, a proper basis.[56] In Hav-a-Tampa Cigar Co. v. Johnson,[57] Chief Judge Brown of the Florida Supreme Court stated in a concurring opinion:

> "I think the time has come to make a candid avowal of the right of the legislature to adopt appropriate legislation based on these so-called aesthetic but really very practical grounds."

In a subsequent case, Merritt v. Peters,[58] this view was adopted by the entire court. In this case a zoning ordinance restricting the size of signs was upheld. The Florida Supreme Court specifically held that factors of health, safety and morals did not form a reasonable basis for the restriction but that protection of the beauty of the community did. The Court of Kansas reflected similar thinking:

> "Has the time not come, or at least is it not almost here, when the courts will drop the mask of an exclusive concern for safety and health that in the case of billboards is not real, and frankly approve reasonable regulation of the use of property in the interest of beauty?"[59]

In this connection the statement of Justice Douglas in Berman v. Parker[60] is interesting. The case involved condemnation of land in the District of Columbia in a redevelopment program. Plaintiffs held that property was included that was not blighted or dangerous and that property owners were being unnecessarily deprived of their land. In his opinion Justice Douglas stated:

> "The concept of public welfare is broad and inclusive . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the

legislature to determine that the community should be beautiful as well as healthy . . . If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth amendment that stands in the way."

Although this opinion is dicta and applies to circumstances other than outdoor advertising, it is worthy of note. At least one court has made mention of Berman v. Parker. The Wisconsin Court recently stated:

"In view of . . . Berman v. Parker, this development of the law has proceeded to the point that renders it extremely doubtful that (the general rule that the zoning power may not be exercised for purely aesthetic considerations) is any longer the law."[61]

A legal analysis of outdoor advertising prepared by the Highway Research Board cites cases in New York, Louisiana, Pennsylvania, Michigan, and Minnesota from 1940 to 1950 which "show the willingness of courts to predicate, if necessary, the validity of police regulations upon aesthetic considerations."[62]

Because of the tenuous legal position of aesthetics as a valid factor in the exercise of the police power, the courts generally have looked to other considerations in the broadened area of general welfare in the tradition of St. Louis Gunning Co. v. St. Louis.[63] This case, as discussed above, involved displays placed on city streets, where the danger of signs being a source of unsanitary conditions or a shield for illicit activity is evident. Signs on an open highway do not involve a completely comparable situation. Application of the principles of the Saint Louis case to highways has involved a gradual extension of these principles. Aside from aesthetics there are three main defenses of billboard control advanced in more recent cases: safety, freedom from intrusion, and protection of highway use.

Safety. It is perfectly clear that signs that can be directly related to safety can be regulated under the police power. Such signs would be those that obstruct vision at critical points. The Georgia Code specifically provides that "no sign may be erected in any place or position when it obstructs the view from any public road in the State to any other portion of said roads."[64] Such cases are, however, the exception. This is particularly true since the outdoor advertising industry, in its own code of ethics, restricts itself in this regard. One code, for example, provides that "placement of outdoor advertising must permit proper sight distance at railway or highway intersections and on the inside of curves."[65] The question arises as to whether or not advertising has any relation to safety outside of those obvious cases where view is obstructed. Is there a relation, for example, between signs appearing on a straight stretch of highway and highway safety where the signs do not block the view? Defenders of outdoor advertising argue that there is no such relation and that, in fact, signs provide stimuli to prevent "highway hypnosis" which results from the routine of unbroken landscape.[66] Those on the other side of the question argue that it is a matter of common knowledge that it is the very nature of roadsigns to distract and that a sign is not effective unless it does this. An automobile traveling at 60 miles an hour covers 88 feet a second. Under these circumstances, it is argued, even brief inattention can be fatal and distraction is bound to affect safety. In addition, it is pointed out, the National Standards do not entirely forbid billboards. On a typical straight stretch, one sign per mile is permitted on each side of the road. A car traveling 60 miles an hour will pass a display facing in his direction every 60 seconds. This should be sufficient to prevent "highway hypnosis."

Discussions on this matter invariably cite safety research work done in Iowa, Michigan, and Minnesota.[67] The findings of this research are conflicting. The Iowa research involved a laboratory study under simulated highway conditions. The Michigan study presented a statistical analysis of accidents occurring over a 100-mile stretch of selected highway as these accidents might be related to nine fifferent highway features. These features included: taverns, gas stations and commercial garages, stores, restaurants, other establishments, private drives, design features, advertising signs, and vehicle miles. Partial correlation coefficients were computed to determine the extent to which each of these factors, independent of the other factors, is related to accidents. Correlation between the Iowa and Michigan studies was done by Dr. Lauer of Iowa State College. The conclusion of these two research projects has been summarized as follows:

> "The studies each confirm that there is no significant relationship shown between outdoor advertising signs and highway accidents. The evidence, if any, is slightly in favor of having something along the highway to arouse the motorist and keep him alerted as far as efficient driving is concerned. These results fit in very well with what is known about efficiency of performance in many other areas from various psychological experiments. A certain amount of 'distraction' would seem necessary, if it may be so disignated, to keep the driver or performer alert and at his highest level of efficiency."[68]

The Minnesota study involved a statistical analysis of accidents occurring on 510 miles of selected highway. The number of variables in this study was more limited than in the Michigan study. Correlations were computed for sign frequency, traffic volume, and accident rate. This study showed a positive relationship between sign frequency and accidents.

This difference in expert opinion presents a problem for the courts. Since a presumption of constitutionality exists for all properly enacted legislative acts, the advantage is in favor of the legislature. It would be a mistake, nevertheless, to rely on this completely. While there is a presumption in favor of constitutionality, the finding of the legislature is not determinative.[69] In two recent cases involving regulations based on the National Standards the courts interpreted the safety factor in opposite ways. In Wisconsin the circuit court upheld the regulations, in part, because of the safety factor. In this case the author of the Michigan safety study appeared as an expert witness.[70] The findings of the Minnesota study were cited by the defense. Faced with this conflict in testimony, the court commented as follows:

> "We must say that the plaintiffs introduced very formidable testimony calculated to show that there is no established causal relationship between roadside advertising and traffic accidents. It was, of course, conceded that advertising signs with flashing lights were a hazard. It was also evident that there were many other roadside distractions in addition to roadside advertising. And it was also evident that some distraction is often conducive toward traffic safety because it counteracts the monotony of driving along a smooth, well-engineered turnpike with all the factors present that tend to lull a driver to sleep at the wheel. On the other side there was testimony calculated to show that any roadside signs are intended to attract the attention of the driver and that too many such signs keep his mind away from his driving and from the traffic signs and create a driving hazard. Upon this state of the record the legislature was in the position where it had basis to find that regulation of roadside advertising was in the interests of traffic safety and to ground its legislative enactment accordingly."[71]

In an Ohio case the same safety studies were submitted as evidence and some of the same witnesses appeared. The court decided that the testimony of experts indicated that there is no relation between safety and outdoor

advertising and rejected safety as a basis for implementation of the police power. On this point the court stated:

> "Studies have been made and copies of them have been introduced into evidence utilizing various investigative procedures and mathematical formulas involving the arbitrary use of greater or lesser numbers of variables, from which, through mathematical calculations, results may be obtained which can be interpreted as applying to this issue. If the process is utilized of using a large number of variables which are assumed to affect the occurrences of accidents on highways and the mathematical procedure for the obtaining of a partial correlation coefficient, it is established that the relationship between advertising signs along highways and accidents on such highways is negligible. This is the gist of the so-called Michigan study, in which study a great number of variables arbitrarily assumed to influence highway accidents, including outdoor advertising devices, were utilized. The so-called Iowa study comes to the same conclusion. These surveys are objective studies, conducted in accordance with what the Court believes from the evidence adduced in these cases to be recognized and acceptable investigating, evaluating and statistical methods. The so-called Minnesota study utilized only three variables, namely outdoor advertising devices, traffic volume, and accidents. Due to the limited number of variables used in the mathematical analysis employed, in addition to the admitted lack of certain components affecting highway accidents in the calculation, the weight of the Minnesota study is regarded by the Court as negligible, a conclusion apparently shared by counsel for the State as he makes no reference to nor does he rely upon it in his argument in his otherwise exhaustive briefs. No substantial relation between advertising devices as defined in the statutes in question and public safety appears from the record of the evidence adduced in the trial of these cases. If any such relation is shown at all, it is to the effect that such devices are beneficial to safety in that they tend to alert drivers, to keep them actively attentive to roadway conditions and tend to prevent 'highway hypnosis.'"[72]

Freedom From Intrusion. In addition to safety, another factor that has been cited as a basis for exercise of the police power is that of freedom from intrusion. The position is taken that the right of visibility in the case of advertising collides with the right to be let alone. This right has received ample recognition by the courts. For example, regulation of door-to-door solicitation[73] and handbill distribution[74] have been upheld by the courts. The persistent and unavoidable nature of outdoor

advertising has been noted by the United States Supreme Court in a decision upholding a Utah statute making it unlawful to advertise tobacco products on outdoor signs. The Court quoted favorably an observation of the State Court which said:

> "Advertisements of this sort are constantly before the eyes of observers on the streets and in streetcars to be seen without the exercise of choice of volition on their part. Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer. The young people as well as the adults have the message of the billboard thrust upon them by all the arts and devices that skill can produce. In the case of newspapers and magazines, there must be some seeking by the one who is to see and read the advertisement. The radio can be turned off, but not so the billboard."[75]

The right of the traveler to be protected from intrusion was cited by the court in the Massachusetts billboard case. In this regard the court stated:

> "The right asserted is not to own and use land or property, to live, to work, or to trade. While it may comprehend some of these essential liberties, its main feature is the superadded claim to use private land as a vantage ground from which to obtrude upon all the public travelling upon highways, whether indifferent, reluctant, hostile or interested, an unescapable propaganda concerning private business with the ultimate design of promoting patronage of those advertising. Without this superadded claim, the other rights would have no utility in this connection . . . These rules and regulations were promulgated in the exercise of the police power. . .(They) must have some reasonable basis and be designed to accomplish a permissable end, in order to be valid . . . One basis, according to the finding of the master . . . is that the safety of travel upon highways is promoted . . . Another basis . . . is that they tend to protect people traveling upon highways from the intrusion of public announcements thrust before their eyes by signs and billboards. . . . The right to own land and to use it according to the owner's conception of profit in the main is a part of the liberty secured to the individual under the Constituion; but that right is subject to legislative regulation in the public interest . . . The right of the traveler upon the highways to a peaceful and unannoyed journey, so far as concerns advertising on private lands is recognized by Art. 50. To adjust the conflicting interests of the public and of the individual is a proper legislative function."[76]

Protection of Highway Use. The argument that outdoor advertising involves a violation of the traveler's right to be let alone is not unrelated to the more general objection that outdoor advertising is an unwarranted use of the highway in general -- the exploitation of the highway for a use not directly intended. According to this view regulation is directed, not at property use, but at highway use. The abutting landowner's claim is a "permissive easement" which can be withdrawn without compensation. There is a suggestion of this line of thought in the classic Massachusetts case:

> "The object of outdoor advertising in the nature of things is to proclaim to those who travel on highways and those who resort to public reservations that which is on the advertising device, and to constrain such persons to see and comprehend the advertisement. . . . In this respect the plaintiffs are not asserting a natural right . . . they are seizing for private benefit an opportunity created for a quite different purpose by the expenditure of public money in the construction of public ways and the acquisition and improvement of public parks and reservations."[77]

This line of argument would seem to be particularly adapted to the modern controlled-access highway where the purpose of the road is different from that of highways of the past. The purpose of the Interstate Highway is not to serve the local landowners primarily. It is designed to handle through-traffic at high rates of speed. The controlled access feature of the highway emphasizes this purpose. The relation of the abutting landowner to this thoroughfare is quite different from what it is to the highway traditionally conceived from antiquity. In the case of a superhighway its proximity to the adjacent land is not indicative of a special relation to that land. To claim a right of advertising is to exploit it for a use not intended and to obtain advantage from a value created by heavy expenditures by the tax payers. This theory is still a

minority view held in a few states. It "is not consistent with the usual interpretators given the common law of real property, which may be summarized as saying that one's property right includes a right to make any use of it that is not absolutely adverse to the public good."[78]

New York State Thruway Authority v. Ashley Motor Court, Inc.[79] provides an example of the application of this doctrine to the case of a highspped, controlled-access highway. In this case the court said:

> ". . . it was the very construction of the Thruway which created the element of value in the land abutting the road. Billboards and other advertising signs are obviously no use unless there is a highway to bring the traveler within view of them. What was taken by the regulation, therefore, was the value which the Thruway itself had added to the land and of this the defendent cannot be heard to complain."

In the Allen County, Ohio case there is explicit rejection of this view. The Ohio court said in part:

> "The argument advanced by the New York Court in the case of New York State Thruway Authority v. Ashley Motor Court, Inc., that, because advertising devices are obviously of no use unless there is a highway to bring the traveler within view of them, therefore what is taken by a state when it prohibits the erection and maintenance of billboards along such highway is merely the value which the throughway itself has added to the land and therefore the property owner cannot complain, is an ingenious one but to this Court, wholly fallacious. According to such reasoning no property owner could complain against any of his property rights being taken from him by the one responsible for having brought about a situation whereby his property values were increased to the extent of the increase. That is to say, if one's property was increased in value because of the erection in close proximity to it of either a public or private installation, then the owner could not complain if the builder of the installation, either public or private, invaded the property rights of the owner to the extent of the increase in value thus brought about. Many factors are involved in the enhancement of the value of real estate. Proximity to other buildings and establishments always is a factor in either an increase or decrease in the market value of land. Certainly this alone does not entitle the person who has created the building or establishment to capture for himself or for his own use or benefit the portion of the value of the landowner's property which is represented by such increase in value. Nor does such a situation entitle the one whose construction of such establishment has increased.

the value of adjoining or nearby lands to prohibit the owner of such lands from enjoying the benefits of the increased values thus created. Such argument is novel and to this Court is repugnant and certainly should have no place in the determination of issues involving the constitutionality of statues."[80]

Cases Under the National Standards

Since the National Standards have gone into effect, three decisions have been handed down.[81] The Ohio and Wisconsin cases have been referred to above, but because of the importance of these opinions to this inquiry a brief summary of these cases will be made.

The Wisconsin case had as plaintiffs, Warren and Wayne Fuller, co-partners of an establishment comprising a motel, restaurant, and gas station along State Highway 41, a part of Highway I94. The plaintiffs had on-premise and off-premise signs which had been up for a number of years before Highway 41 was made a controlled-access road and designated as part of the Interstate System. At about the same time three cases were brought before the Court of Common Pleas, Allen County, Ohio, testing the constitutionality of that state's law based on the National Standards. These cases involved signs maintained by the Ghaster Outdoor Advertising Company on land leased from Ghaster Properties, Inc.: a Shell-21-billboard and a Howard Johnson's Motor Lodge and Restaurant billboard, all of which were ordered removed by the Director of Highways. The three cases were consolidated as Ghaster Outdoor Advertising, Inc. v. Preston. In New Hampshire, where advisory opinions of the Justices of the Supreme Court are permitted to be rendered, questions were propounded by the House of Representatives to the Supreme Court inquiring whether a proposed law restricting outdoor advertising on the Interstate Highway System would violate any constitutional provisions.

A review of these cases is enlightening with regard to the issues that are raised in such a case and the attitude of the courts in question with respect to them.[82] In all three of these cases the issue arose as to whether or not the implementation of legislation based on the National Standards involved an invalid use of the police power. The Wisconsin court and the New Hampshire Supreme Court decided that it did not constitute an invalid exercise of such power. Both courts accepted safety as a valid basis. The Wisconsin court added that roadside advertising involves "an undersirable intrusion upon the sensibilities of persons traveling along and upon the highway." Both courts observed that the values of the highway arose from the taxpayers and that the interests of the traveling public deserved first consideration. The Wisconsin Court held aesthetics to be a proper basis. The New Hampshire Court considered aesthetics as at least "entitled to weight" in the deliberations of the court without facing the question of whether or not this formed a sufficient basis by itself.

While both of these courts accepted on principle the use of the police power in the implementation of legislation based on the National Standards, both also qualified the opinion. The advisory opinion of the Supreme Court of New Hampshire is considerably modified by its comment that its general approval is not necessarily automatically applicable to all cases. The Court said:

> "If in a specific situation a sign which is in fact not a nuisance is forbidden by the bill its removal should be required only upon payment of compensation."[83]

The Wisconsin court specifically declared certain portions of the Wisconsin bill to be discriminatory.[84] The statute provided that no sign is permitted within 1,000 feet of another sign and that there should not be in excess of

2 signs within any mile distance measured from any point. The court was disturbed by the method of allocating the limited spaces available. The statute stated that "a permit for an eligible sign location shall be issued to the first applicant to submit to the Commission's main office at Madison a proper and satisfactory application as determined by the Commission." In voicing its objections to these parts, the court stated:

> "These provisions do not treat fairly and equally all property owners and businesses located along and upon the highway. They tend to establish and create preferences in the fortunate parties who get there first. Such licensing is not fair and reasonable regulation. It smacks of monopoly, special privilege, and favoritism . . . To us these provisions appear clearly arbitrary and unreasonably discriminatory."

The court concluded that if a more reasonable basis for allocating the permissible spaces could not be found that it would be better to eliminate all signs in such spaces. "In our view such elimination would not be a deprivation of property rights in violation of the constitution since all of the signs here referred to exist solely because of the highway and are purely derivative."[85]

The Ohio court held that the implementation of the Standards did involve a "taking" of property in violation of the due process clause. As noted above, it rejected safety and aesthetics as a valid basis for exercise of the police power in this case. It refused also, as we have seen, to recognize any limitation on the landowner on the theory that advertising value arises out of the highway itself. The findings of this court are the exact opposite of those of the Wisconsin and New Hampshire courts.

Another point raised in these cases is that the National Standards impose restrictions on billboards advertising off-premise activities that they do not impose on billboards advertising on-premise activities. The Ohio court decided that this does constitute discrimination. The New Hampshire court held

that it does not. The Wisconsin court held that the fact that the statute does not regulate other roadside structures which are just as much related to safety and may intrude on sensibilities is not discriminatory. "The classification is reasonable and does no violence to constitutional rights."

A contention, in the Wisconsin case, that the regulations abridge freedom of the press was rejected by the court.

An issue that is new to billboard litigation arises under legislation based on the National Standards. This is the issue that the agreement which the state enters into with the Department of Commerce involves a bargaining away of the state's police power. Both the Wisconsin and New Hampshire Courts rejected this. It seems unlikely, in view of the historical recognition of the power of governments making up our federal union to enter into bargains and contracts, that any court would invalidate Interstate Highway regulations on this basis. Indeed the Interstate Highway itself would not be possible if there were substance to this argument since the act of Congress initiating the System provides for a bargain between the state and the federal government which includes such things as an agreement to control access.

In summary, legislation based on the National Standards has had a mixed reception in the courts. In Ohio regulation based on police power was declared unconstitutional. In Wisconsin the regulations were approved, with the exception of certain sections pertaining to the allocation of advertising space. In New Hampshire the court generally approved the regulations but left open the possibility of litigation for specific cases. The Ohio case has not yet been appealed to a higher court. The Supreme Court of Wisconsin has scheduled the Wisconsin case for hearing arguments during the week of January 7, 1963.

Georgia Courts and Billboard Regulation

Research has failed to reveal a single ruling in higher Georgia Courts that directly involves billboards and is pertinent to the problem of billboard control on the open highway. In Stanfield v. Johnson[86] the Court of Appeals ruled on the interpretation of Sec. 95-2006 of the Code which refers to the erection of signs that obstruct the view of one portion of a highway to another. The court stated that the provision applies to signs on private property. In Mayor etc. of Savannah v. Bay Realty Company,[87] the Court of Appeals was asked to issue a declaratory judgment "on the legality of a penal zoning ordinance, or ordinances, of the City of Savannah prohibiting the placing of billboards, or outdoor signs, within 200 feet of Eugene Talmadge Memorial Bridge in the City of Savannah." The circumstances surrounding the case are summarized in the headnote:

> Under the allegations, the extent of the plaintiff's damages against Savannah Power & Light Company in an impending proceeding to exercise its right to an easement to string its electrical wires over the plaintiff's warehouses is dependent upon the legality of a penal zoning ordinance, or ordinances, of the City of Savannah prohibiting the placing of billboards, or outdoor signs, within 200 feet of the Eugene Talmadge Memorial Bridge in the City of Savannah. The stringing of the electrical wires will prevent the plaintiff's proposed use of the roofs of its warehouses for outdoor advertising purposes. It has been agreed between the plaintiff and the electric company that the wires may be strung and that the electric company will hold its eminent domain proceeding in abeyance pending the outcome of the present suit for declaratory judgment as to the validity of the zoning ordinances. If the ordinance, or ordinances, be valid, the plaintiff would have no right to place the signs at the proposed points on its roofs, and, consequently, in the eminent domain proceeding, its damages would be only nominal. If the ordinance, or ordinances, be valid, the plaintiff would be at liberty to place the proposed billboards on its roofs and would receive an income of several thousand dollars a year therefrom and, consequently, in the eminent domain proceeding, the extent of the plaintiff's damages would be considerably more than nominal. While the ordinance, or ordinances, are made penal, it appears from the petition that the plaintiff does not propose to violate their provisions, as it has already permitted the electric company to string

its wires over the warehouses, which precludes the erection of the outdoor signs or billboards."

The Court refused to rule in this case "since no justiciable controversy exists between the plaintiff and the city, within the meaning of the declaratory-judgment law."

In Campbell et al. v. Hammock et al.[88] there is a general implication that at least some billboard ordinances are valid. In this case the petitioners for an injunction to have a billboard removed owned a building fronting within a few inches of the sidewalk of a street in Augusta. The defendants owned a building on an adjoining lot, the front of which sat back from the sidewalk about 35 feet, leaving a portion of the petitioners' wall exposed. "Petitioners placedan advertising sign on their exposed west wall and a neon sign on top of their building; . . . thereafter defendants erected a large outdoor advertising sign on the east edge of their lot and a few inches from petitioners' west wall, completely obscuring the sign on petitioners' wall." The petitioners maintained that the erection of the billboard by the defendants was malicious in intent and requested an order for removal. The decision of the court is of interest to this study because of the reference to billboard ordinances. In its opinion the court stated:

"The allegations of the petition as amended were insufficient to allege that the billboard constituted a nuisance where, as here, it appears that it was otherwise lawful and was unrestricted by statute or by ordinance." (Emphasis added.)

Jackson v. Beavers[89] involved the constitutionality of an act of the legislature prohibiting professional bondsmen from soliciting business. In a general discussion of the police power, the following statement appears:

"Under the police power the height of buildings in a city may be regulated. Welch v. Swasey 214 U. S. 91 (Sup. 567, 53 L. ed. 923) Billboards in cities may be regulated. St. Louis Adv. Co. v. St. Louis, 249 U. S. 269 (39 Sup. Ct. 274, 63 L. ed. 599) (Emphasis added.)

Since the circumstances of these cases involved billboards within a city and the references to regulation are indirect ones, they are of limited help, at most, in the problem we are considering. There being no definitive case in Georgia on the subject of billboards on highways, we must look to the attitude of the courts concerning application of the police power in comparable situations for a guide. Decisions of the court in the related field of zoning are the most revealing. Comments of the court on the use of the police power in the regulation of businesses, professions, and occupations are also helpful.

The Police Power, General Principles. The general principles of the police power discussed before in this report are followed in the Georgia courts. "This power [the police power] is very broad. It has limits and boundaries, but they are far-flung."[90] Acts of the legislature will not be declared invalid unless it is clear that they are so. In DeBerry v. LaGrange[91] it is stated:

> " . . . it should be borne in mind that there is a presumption in favor of the constitutionality of a legislative enactment."

If an act is susceptible of two constructions, "in such cases the construction which will uphold the constitutionality of the law is rather to be preferred."[92] It has also been said:

> "A large discretion is necessarily invested in the legislature to determine (a) what the interests of the public require, and (b) what measures are necessary for the protection of such interests."[93]

Nevertheless the court has declared that "exercise of the police power by the General Assembly is subordinate to the Constitution of the State;"[94] and that "legislative authority may not unreasonably invade private rights,

so as to violate such rights as are granted by the Constitution."[95] The twin obligation of the courts to recognize legitimate exercise of the police power and, at the same time, to prevent violations of the due-process and equal-protection clauses is succinctly summarized in Bramby v. State:[96]

> "As in all cases where the constitutionality of a statute is involved, we are confronted, on the one hand, with the duty of sustaining the act unless its validity is clear and palpable, and on the other with the positive command of the constitution of this State that legislative acts in violation of either the State or the Federal constitution are void, and the judiciary shall so declare them . . . The responsibilities thus imposed, while entirely consistent, require a survey in opposite directions, and the greatest care must be taken that neither of them is violated. The constitution of this State empowers the General Assembly to make all laws and ordinances consistent with this constitution, and not repugnant to the constitution of the United States, which they shall deem necessary and proper for the welfare of the State.' . . . The plain meaning of this provision is that the General Assembly can not exercise an anbounded authority in determining what is necessary and proper for the public welfare, but must proceed, in this as in other instances, consistently with constitutional guaranties. . . The regulation of a lawful business . . . is dependent upon some reasonable necessity for the protection of the public health, safety, morality, or other phase of the general welfare; and unless an act restricting the ordinary occupations of life can be said to bear some reasonable relation to one or more of these general objects of the police power, it is repugnant to constitutional guaranties and void."

The Police Power and Zoning Ordinances. To understand precisely what the courts will recognize as "reasonable" necessity for the protection of the general welfare, we must look to the decisions of the courts on specific issues. The history of zoning ordinances provides one example. Prior to 1928 the Georgia Supreme Court held that the zoning cases brought before it represented an invalid exercise of the police power. Smith v. City[97] of Atlanta, in 1925, involved, "primarily, the decision of the constitutionality of certain ordinances of the City of Atlanta, known as the zoning ordinances; and, as incidental thereto, the constitutionality of certain

provisions of an act of the legislature approved August 4, 1921, being an act to amend the charter of the City of Atlanta, under authority of which the ordinances in dispute were enacted." The Court continued:

> "So far as it relates to the case made in this record, the ordinance in effect prohibited the erection of buildings to be used as retail stores upon any property in a district of the city set apart, under the ordinance referred to, as a residence section. If that part of the act which authorized the city to so redistrict or divide up the city into zones is constitutional and valid, then it would seem to follow that the ordinance is also valid; and if that part of the act of the General Assembly to which we make special reference is unconstitutional and invalid, then that part of the ordinance passed in conformity to the act is also invalid. And so the principal and controlling question that we have to deal with is the constitutionality and validity of the act and ordinance in question; or, rather, the constitutionality of that part of the act and ordinance which prevents the building of stores upon property located in the districts made residential by the city's ordinance.
>
> "The right to redistrict the city and to prohibit the erection of business houses and stores in certain districts is claimed by the city, not under its right of eminent domain, for no compensation is to be paid to those property owners who are refused the right to erect stores; but it is asserted as a proper exercise of the police power . . ."
>
> "The act of the legislature containing the authority for the ordinance in question recites that the power of zoning is conferred 'in the interest of the public health, safety, order, convenience, comfort, prosperity,' etc. But legislative declarations of facts that are material only as the ground for enacting a law will not be held conclusive by the courts . . . While the legislature is the sole judge as to matters pertaining to the policy, wisdom, and expediency of statutes enacted under the police law, the question as to whether the particular legislation purporting to be enacted in the exercise of the police power is really such, and whether regulations prescribed by the legislature are constitutional, are questions for the judiciary."

In this clearly defined case of exercise of the police power, the court ruled that the enabling act of the General Assembly, and the ordinance passed by the City of Atlanta in pursuance of that act, were unconstitutional and invalid.

A similar ruling was handed down in Morrow v. City of Atlanta[98] in 1926:

"Under the ruling of this court in Smith v. Atlanta . . . the municipal authorities of the City of Atlanta are not authorized to interfere with the use of plaintiff's garage in the rear of his residence for carrying on the lawful business of storing and repairing automobile tires. . . . In so far as the zoning ordinance of the City of Atlanta . . . seeks to deprive the owner of real estate thereafter designated as an apartment zone of the right to use his realty in the pursuit of a business recognized as lawful, such ordinance is unconstitutional and void."

In 1927 a constitutional amendment was passed authorizing the General Assembly to grant to cities authority to pass zoning and planning laws.[99] It was ratified by the people in the following year. The provision was subsequently amended several times.[100] In 1937 authority to grant to counties the same power was incorporated into the constitution. These provisions were included in the revision of the constitution in 1945 as Sec. 2-1923. Following the amendment in 1928, the general principle of zoning by municipalities was approved by the court. Howden v. Savannah[101] dealt with a denial of a building permit to erect a gasoline filling-station in an area restricted under a Savannah ordinance. The court reasoned as follows:

"The precise question for adjudication is this: Is the denial to the owner of a residence lot located in a district zoned, by a city ordinance passed in pursuance of legislative and constitutional authority, exclusively for residences, apartments, churches, hospitals, schools, and hotels, of a permit to erect on such lot a gasoline filling-station a deprivation of her property within the meaning of the due-process clauses of the constitution of this State and of the 14th. amendment to the constitution of the United States? In other words, can an owner of land be constitutionally denied the right to erect thereon a building for the conduct of a business therein, if neither the business nor the manner of its operation constitutes a nuisance? . . .(We) have now in the constitution as now amended both the due-process clause and this zoning provision. They must be construed together. In view of this amendment it can no longer be held that a zoning statute, which authorizes a city embraced within it, to pass a zoning and planning ordinance, is per se unconstitutional and void because it deprives the owner of real estate of his property without due process of law. This constitutional provision supersedes the decisions of this court which declared zoning statutes unconstitutional and void because they denied due process of law to the owners of real estate embraced in zoning districts."

Howden v. Savannah has been followed by the court in subsequent zoning cases down to the present time.[102] It is perfectly clear that the basic validity of zoning laws rests, in the mind of the courts, on the constitutional amendment. Schofield v. Bishop[103] which follows the principle annunciated in Howden v. Savannah refers, in connection with zoning authority, to "the power of a governing body, whether under the police power, as is permitted in some States or under a specific constitutional provision as in this State." (Emphasis Added.)

One of the most recent cases on the question of zoning is Vulcan Materials Co. v. Griffith, decided in 1960. This case involved an equitable action to enjoin the operation of a quarry. One of the counts of the petition alleged that operation of a quarry was being permitted in a district zoned agricultural in violation of the zoning regulations of Fulton County. The special use permit issued by the zoning commissioners exempting a tract of land from the regulations applying generally to a zoned district presented the court with the problem usually referred to as "spot zoning." Birdsey v. Wesleyan Colleg[104] says: "Spot zoning generally relates to action in 'lifting out' of a zoned area one unit, or one particular piece of property." Spot zoning was ruled out by the Court in Snow v. Johnston (1943),[105] Birdsey v. Wesleyan College[106] (1955), and Neal v. City of Atlanta (1956).[107] On the other hand spot zoning was approved in an earlier decision, McCord v. Ed Bond and Condon Co. (1932).[108] In Vulcan Materials Co. v. Griffith the court notes the conflict in these opinions. The decision written by Chief Justice Duckworth, provides summary of the history of the development of zoning law in Georgia and the current broad attitude of the court. It deserves to be quoted at length:

> ". . . lawyers and judges of this State before the dawn of constitutional consent to zoning of private property had become

saturated with the fact that the Constitution respected and held inviolate private property and insured equal protection of the owner in the use of such property. But the people by their votes amended or changed this constitutional guardianship of private property, and in the process stipped their judiciary of power to protect it, as had theretofore been the case. By the constitutional change the people voluntarily subjected their property to the unlimited control and regulation of legislative departments. The Constitution (Code, Sec. 2-1923) now provides: 'The General Assembly of the State shall have authority to grant the governing authorities of the municipalities and counties authority to pass zoning and planning laws whereby such cities or counties may be zoned or districted for various uses and other or different uses prohibited therein, and regulating the use for which said zones or districts may be set apart, and regulating the plans for develcpment and improvement on real estate therein.' Pursuant to this constitutional authority, Georgia Laws 1939, p. 584 (applicable to Fulton County), and Georgia Laws 1952, p. 2689 (applicable to counties having a population of 300,000 or more) were enacted. These acts conferred upon county governing authorities all the powers the Constitution authorized. Section 24 of the 1939 act and section 25 of the 1952 act, in identical terms, provide that the county governing authorities are 'clothed with all of the authority which the General Assembly can grant to such authorities . . . under the laws of the State of Georgia.' In defining zones and districts and the uses therein, the General Assembly conferred equally unlimited power to those mentioned in the Constitution. They vested in the county authorities the power to zone property without limitation as to the number of such zones, and without limitation as to the uses allowed or prohibited; and without specification as to the procedure, other than a resolution, notice, and a hearing, to be followed in zoning or the time when such zoning should become effective . . . Such limitless powers are simply beyond judicial review . ... It would seem that the foregoing quotations from the Constitution and statutes demonstrate plainly that the county commissioners have complete freedom to create any number of zones and districts and of such size and shape as they may arbitrarily choose. This means that they have the authority to create zones or districts of any size, whether 10 feet square or any number of acres in any conceivable shape. The utter impossibility of bringing the terms and conditions of such legislative powers to judicial decisions perhaps explains why the county authorities are required to give persons to be affected by proposed zonings an opportunity to be heard. The kind of hearing is not prescribed, and irrespective of what is shown at such hearings, the authorities are given absolute power to proceed as they choose in total disregard of what such hearings reveal.

"When the act plainly empowers the county authorities to amend or to modify existing zones, and proscribes no particular instrumentality by which such amendments or modifications must be effectuated, the courts are given no power to prescribe the instrumentalities

or to condemn any procedures by which the authorized result is accomplished. This means that it is idle for a court to attempt to distinquish between such terms as spot zoning and special use permits. (Emphasis in original)

. . . Indeed both the Constitution and statutes authorize what this court has called spot zoning. The courts must refuse to interfere with the legislative acts of zoning because the courts are given neither chart nor compass by which to adjudicate and condemn the actions of zoning authorities. We therefore conclude that the people must submit to the legislative control of their property, or change the Constitution to afford the courts something to stand upon in protecting private propoerty. We have neither the information, experience nor desire to make public policy in respect to legislative control of the uses of private property."

Police Power in Cases Other Than Zoning. Examples of the courts' attitude on the use of the police power, other than zoning, are available. In Brinkman v. City of Gainesville[109] an ordinance prohibiting the operation of a loud speaker or public address system upon the streets of the city was upheld as constitutional. In part the court said:

"The thoroughfares of cities are for the comfort and convenience of all people using them. They are maintained by the public, and to say that anyone has a constitutional right to use, on these streets, a loud speaker or public-address system from any vehicle, it seems to us overlaps and interferes with the constitutional rights of other people."

It has also been held that the transportation of passengers for hire in a taxicab on the city streets is not an inherent right and can be regulated.[110] The regulation of professional bondsmen is not unconstitutional.[111]

In Cutsinger v. City of Atlanta,[112] the general principles of when it is permissible to require a license of a business or occupation are laid down.

"The police power to grant licenses by which one person can conduct a certain business and another can not, or by which a business may be conducted at a certain place and not at another, necessarily involves some discrimination for the public welfare. Such licenses have been broadly grouped into four classes: (1) Where promiscuous or indiscriminate freedom to act will disturb public order or interfere with the common use of public places.

> A type of this class is in regard to permitting the use of the public streets for parades or processions . . . (2) Where an occupation is offensive to comfort or endangers public safety, it may be so restricted as to locality or the manner in which it shall be conducted as not to cause injury. Chemical factories and slaughterhouses furnish examples of this class. (3) In some occupations the lack of personal qualifications or competence causes the danger to the public, and requires to be guarded against. Doctors, dentists, and plumbers are illustrations of this class. (4) Some occupations are held to be such as to involve danger to the public peace, order, or morality, and therefore to be proper subjects for regulation or licensing so as to prevent injury to the public . . . Pawnbrokers and junkdealers illustrate this class."

On the basis of these guidelines licenses can be required for hotels and rooming houses.[113] Curb markets can be regulated.[114] However, a municipality cannot refuse a permit to operate such a business at arbitrary discretion or after the conditions for obtaining a permit have been fulfilled, unless the business is a nuisance per se. An act of the General Assembly passed in 1937 establishing a State board of photographic examiners and requiring persons desiring to engage in the business of photography or photofinishing to stand an examination and qualify as to competency, ability, and integrity was declared to be unconstitutional as an exercise of the police power not bearing "any reasonable or substantial relation to the public health, safety, or morality, or other phase of the general welfare."[115]

A nuisance is defined in the Georgia Code as "anything that works hurt, inconvenience, or damage to another; and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary reasonable man."[116] The courts have ruled that steam laundries and dry cleaning establishments are not nuisances per se, but may be such by reason of the way in which they are operated.[117] Airports are not nuisances per se. Gasoline filling-stations

are not nuisances because they are erected in residential sections.[118] Cemeteries are not nuisances when placed in proximity to a residential area.[119]

In DeBerry v. City of LaGrange[120] the Appeal Court dealt with an ordinance prohibiting peddlers' going from door-to-door soliciting orders, and declared this to be a nuisance. The court held the ordinance, with it's complete prohibition of door-to-door soliciting, to be unreasonable regulation. The court stated:

> "We do not mean to say that the individual is not entitled to the right of privacy, and that where he so desires he can not himself prevent a visitation by such solicitors; for to persist after notice would be a trespass. Nor do we mean to hold that in such cases a municipality could not, by ordinance, aid in the prevention of such a trespass. But we do think that the unlimited imposition of a penalty on an uninvited solicitor who is carrying on a lawful and legitimate business in the usual way, manner, and time is an unreasonable and arbitrary infringement of his rights."

On this same issue the Georgia Supreme Court has been divided.[121]

Grubbs v. Wooten[122] contains a statement that is worth noting. In this case owners of adjacent property petitioned to have a business involving the display and sale of tombstones in a residential area declared to be a nuisance and therefore prohibited. In the brief of the attorney for the plaintiffs it was stated: "We do not claim that the cemetary-like display is necessarily a nuisance per se, but we do claim that it can be a nuisance per accidens." It was argued that in an exclusively residential neighborhood the constant view of the "graveyard-like" appearances of the display would prey upon the minds of individuals and injure health. The business involved was unrestricted by statute or ordinance. The court refused to declare the business to be a nuisance. In a lengthly discussion of a case cited by the plaintiff, however, matters relevant to outdoor advertising regulation are indirectly touched upon.

The case cited is State ex rel. Civello v. New Orleans.[123] The Louisiana Supreme Court held that the legislature could authorize municipalities, by exercise of the police power of the state, to adopt an ordinance establishing zoning districts. The decision of the Louisiana court is quoted at length:

> "The Supreme Court of the United States maintains, and the State courts that have dealt with this subject also maintain, that aesthetic considerations alone do not justify an exercise of the police power to limit a person's right to use his property as he sees fit. It is said, though, that if the primary consideration for the enactment of an ordinance limiting the individual's right to use his own property is a substantial consideration of public health, safety, comfort, or general welfare, considerations of taste and beauty may also enter in, and be not out of place . . . If by the term 'aesthetic considerations' is meant a regard merely for outward appearances, for good taste in the matter of the beauty of the neighborhood itself, we do not observe any substantial reason for saying that such a consideration is not a matter of general welfare. The beauty of a fashionable residence neighborhood in a city is for the comfort and happiness of the residents, and it sustains in a general way the value of property in the neighborhhod. It is therefore as much a matter of general welfare as is any other condition that fosters comfort or happiness and consequent values generally of the property in the neighborhood. Why should not the police power avail, as well to suppress or prevent a nuisance committed by offending the sense of sight, as to suppress or prevent a nuisance committed by offending the sense of hearing, or the olfactory nerves? An eyesore in a neighborhood of residences might be as much a public nuisance, and as ruinous to property values in the neighborhood generally, as a disagreeable noice, or odor, or a menace to safety or health. The difference is not in principle, but only in degree. In fact, we believe that the billboard case, Cusack v. Chicago, 242 U.S. 526, 37 Sup. Ct. 190, 61 l. ed. 472, L.R.A. 1918A, 136 Ann cas. 1917C, 594, or St. Louis Poster Advertising Co. v. St. Louis, 149 U.S. 249, 39 Sup. Ct. 274 63 L. ed. 599 . . . might have rested as logically upon the so-called aesthetic considerations as upon the supposed other considerations of general welfare."

The Georgia Supreme Court makes the following comment on this quotation:

> "The foregoing decision did not involve the exact question of enjoining as a nuisance a display for sale of tombstones and monuments, such as is involved in the instant case. If it had involved such question and the court had ruled that a nuisance was created that should have been enjoined by the courts, the decision would not have been harmonious with the provisions of the Code, and the decisions of this court herein above cited."

This statement of the court relates to a hypothetical situation and involves a comparion of court decisions with a different set of facts. The exact and precise meaning of the statement is, therefore, unclear. The general impression given, however, is that the court does not approve the reasoning of the Louisiana Court on what justifies an exercise of the police power in the case of zoning; specifically, it does not accept aesthetics as a legitimate justification.

Conclusion

There are two possible approaches for regulation of outdoor advertising along the Interstate System in Georgia, without the purchase of easements:

(1) Direct exercise of the police power on the basis of protection of the general welfare;

(2) A constitutional amendment authorizing the legislature to regulate advertising.

Police Power. How the courts would treat legislation based on the first of these alternatives is clearly unknown. As we have seen, the courts refused to recognize as legitimate the exercise of the police power in regard to zoning by municipalities. These cases involve, however, the acts of municipalities, even though based on legislative authorization. It is possible that the courts might be more liberal in reviewing acts of the General Assembly. In DeBerry v. LaGrange[124] the court makes a distinction between the limitations of the power of the two authorities. This case involved, as we have seen, an ordinance forbidding door-to-door soliciting. In its opinion the court said:

"This court is asked to declare the above ordinance unconstitutional, or unreasonable or arbitrary. In order to justify a court in pronouncing a legislative act unconstitutional or a provision of a State constitution to be in contravention of the constitution of the United States, the case must be so clear as to be free from all doubt . . . This same rule of construction ordinarily is applied by this court in passing on the validity of ordinances of a municipality the charter of which gives to it the right to make or pass such ordinances. However, 'Municipal ordinances must be reasonable. The limitations of the power of a city council in this regard are not to be measured by the more extensive powers of the State legislature.' Mayor Etc. of Savannah v. Cooper, 131 Ga. 670, 676, 63 S. E. 138. . . In approaching such a question, or in determining such a question, it should be borne in mind that there is a presumption in favor of the constitutionality of a legislative enactment . . . An ordinance, however, may be declared invalid because unreasonable without declaring it unconstitutional."

If the court were to accept the exercise of the police power in billboard control as valid, it is highly unlikely that it would do so on the basis of aesthetics. Whether the court would accept the argument used in other outdoor advertising cases relating to the protection of the traveler from unreasonable intrusion of billboards upon his privacy, is unknown. In Brinkman v. City of Gainesville, discussed above, the court upheld the prohibition of the use of a loud speaker on the city streets on the basis that "it interferes with the constitutional rights of other people." While the court refused to uphold outright prohibition of door-to-door soliciting in DeBerry v. City of LaGrange, it did say that a municipality could aid, by ordinance, in the prevention of trespass. To draw a specific conclusion from these cases, by inference, about the court's attitude toward outdoor advertising would be unwarranted. As discussed above, some jurisdictions have recognized the argument that any increase in the value of abutting land through potential advertising revenues comes from the Interstate Highway and therefore the landowner has no reason for

complaint if this increase in value is taken away by regulation. The emphasis given by Georgia courts, in its long history, to the constitutional provisions protecting private property makes it unlikely that the court would accept this reasoning.

In setting a foundation for billboard control in Georgia, it would probably be better to argue along the lines of safety and the protection of economic values in the State. The Florida courts have emphasized the protection of scenic beauty as a stimulus to tourist trade. A study prepared by the Bureau of Business Research, the University of Georgia, indicates the economic importance of tourism in Georgia. This report shows that in the twelve month period, September, 1960-August, 1961, out-of-State residents made 6,510,171 recreation trips in privately owned vehicles that ended in Georgia as a destination or involved passage through the State. Georgia residents made 7,670,026 such trips.[125] During the same period total expenditures by tourists and recreation travelers, via automobile, were estimated as a little over $273 million.[126] The data provided in this study gives strong support to the argument that there are solid economic reasons for protecting the natural beauty of Georgia highways.

Constitutional Amendment. In view of the history of zoning regulation, it is rather certain that a regulatory statute backed by a constitutional amendment would be upheld by the court. This would undoubtedly be the best way to proceed in implementing billboard regulation. There is a problem of timing, however. The earliest that a constitutional amendment could be ratified in a general election is 1964. The deadline for entering into a contract with the Secretary of Commerce is in 1963. One solution to this

dilemma is to pass a constitutional amendment and a billboard statute at the next session of the legislature. It is possible that litigation might not reach the court until after the people had had a chance to ratify the amendment in 1964. If this, in fact, happened, the question would arise as to whether or not the 1964 amendment can apply to a statute passed in 1963. Even if the court held that the statute was unconstitutional because the amendment was not retroactive, the legislature could simply pass the statute again, bringing it under the constitutional amendment.

Because of this problem of timing the question arises as to whether or not Section 2-1923 of the constitution, which gives the General Assembly the power to grant to municipalities and counties authority to pass zoning and planning laws, does not also imply that the General Assembly itself has the authority to zone and, accordingly, the authority to regulate billboards. In answer to this, it should be emphasized, first of all, that the constitutional provision refers to zoning. It is questionable whether billboard regulation by the State along the lines of the National Standards is, strictly speaking, zoning. The regulation of buildings and structures in urban areas is quite old historically. Billboard regulation dates back to the 19th. century. Zoning, on the other hand, is a relatively new concept in the United States, "the first comprehensive zoning law having been enacted in 1916 in New York City."[127] "Zoning" has been defined as:

> "a technical term broadly signifying a scheme of regulation of land uses, in exercise of the police power, which entails the division of corporate area of a municipality into zones or districts and the prescribing of the types of land uses that

are permitted in each zone or district to subserve the public health, safety, morals of public welfare of the community."[128]

Note that this specifies the setting off of districts within which regulations of land uses created for the district apply uniformly. If the land adjacent to the Interstate System were divided into classified segments within some of which regulations applied uniformly while other segments were unregulated or controlled by a different set of provisions, this would approximate what is generally understood by "zoning." The provisions of the National Standards call, however, for something different. They provide for spacing and limitations as to number and size along the entire length.

As a matter of fact, however, The Georgia Supreme Court has explicitly stated that Section 2-1923 does not empower the General Assembly to pass zoning regulations. In Herrod et. al. v. O'Beirene,[129] the Court stated:

> "Prior to this time (the Constitutional Amendment of 1928) this court had consistently held that counties and municipalities were without authority to zone property even if the charter of the municipality gave them the right to zone . . . It follows that any right to zone property in this State must be found in the amendment to the Constitution above quoted.
>
> "A mere reading of this provison will disclose that the only authority therein granted to the legislature is the authority to delegate to counties and municipalities the right to zone. Neither under this provision of our Constitution, nor under any other provision of our Constitution or laws, has the legislature the right to zone property. This constitutional amendment vests this power in the local authorities where it properly belongs."

Further Legal Problems. Aside from the general problem of the overall legality of billboard control, the soundness of specific provisions has to be considered. For example, legislation should allow for nonconforming use. If a sign were a nuisance per se -- if it were directly and

obviously detrimental to safety -- an order for its immediate removal would be permissable. In other situations a reasonable period of time should be allowed for amortization of the investment. A five-year period of grace was held reasonable by a Maryland court in 1957.[130] On the other hand a two year period was held to be unreasonably short in an Iowa case in 1956.[131] Although most state statutes implementing the National Standards do not allow for a period of nonconforming use, this is not true of all. Kentucky allows signs erected before the enactment of the outdoor advertising prohibition to be maintained for five years.

If billboard regulation by the State were upheld in Georgia, a requirement that a permit be obtained for each sign would probably also be upheld. It would be better, though, not to pass a requirement, as some states have, that outdoor advertising companies be licensed by the State. In view of the narrowly defined conditions for requiring a license of a business laid down in Cutsinger v. City of Atlanta,[132] discussed above, it is safer if such provisions are not included in Georgia law.

The limitation in the National Standards on the number of billboards allowed per mile means that the State may receive more applications for permits on a given stretch of highway than there are spaces available. This creates the thorniest problem with which administrators of billboard regulation must deal. The lower court in the Wisconsin case, discussed above, was disturbed by the fact that no equitable system had been devised for the allocation of limited spaces. Although nothing in the record has been found to substantiate this, it seems likely that the provision in the National Standards for "information sites" was included in an effort to solve this problem. With such sites available an indefinite number of

posters could be handled. This does not seem to the writers of this report, however, to be a feasible solution. The information sites are not practical. They require the motorist to leave a high speed throughway for the express purpose of viewing billboards. It is unlikely that the typical motorist will do this. A merchant who has been assigned a space on the highway itself has an advantage over another whose poster is assigned space at an information site. We know of no solution to this administrative problem. But if the courts will not recognize a "first-come, first-serve" system as a legitimate attempt to solve a difficult problem, then limitation of the number of billboards on highways is impossible.

A problem vaguely similar to this exists in zoning. If, in districts zoned commercial, the minimum size lot is regulated by ordinance, then a limited number of spaces for businesses are available. In Schofield v. Bishop,[133] where a zoning ordinance forbidding retail stores in a residential district was considered, it was stated in the headnote that "in the restictions as to the use of property contained in the ordinance under review there is no such discrimination as to create a monoply in those persons in the municipality whose property is not so affected." On the other hand it was stated in Jones v. City of Atlanta[134] that "a municipality . . . has no authority, by ordinance, to declare a useful and per se pefectly lawful business a nuisance, and provide for the issuance of permits by the city, which may be granted or declined in the discretion of the governing authorities." The case involved an ordinance which said, in part:

> "Where as, the presence of curb markets has grown to be a nuisance in many sections of the city where they are now located, and Council should pass upon these locations frequently

> in order to protect the communities from such nuisances; therefore be it ordained by the Mayor and General Council as follows: That operators, owners, and managers of curb markets shall obtain a permit from the Council every six months . . ."

The defendent in the case made application for a permit and it was refused. "It was shown that a permit was issued to others in the immediate vicinity to conduct a similar business." The court ruled that:

> "The ordinance in the present case is discriminatory, for it allows the arbitrary granting of the permit to some and the refusal to others . . . The granting of a hearing before a commission who have arbitrary power to grant or refuse a permit is of itself a denial of the due process clause of the Constitution of the State."

How the Georgia Courts would rule on the granting of permits to some and not to others because of the limitation on spaces available is not known.

III. A FINANCIAL ANALYSIS OF OUTDOOR ADVERTISING CONTROL

Introduction

This section of the report is concerned with the financial factors involved in the adoption of the National Standards regarding outdoor advertising along the Interstate System. Essentially it is a flow of funds analysis which divides itself logically into two parts: first, the inflow of funds derived from the adoption of the National Standards; and second, the outflow of funds necessitated by such a move. Specifically consideration will be given to the probable amount of the federal bonus payment (the additional one half of one per cent of the total cost of construction of controlled portions of the system) and to the administrative expenses involved in enforcing the standards. At the outset it must be stated that no definitive figures for either of these amounts is contained herein; such accuracy is impossible without better data. Nevertheless it is believed that the amounts involved are subject to measurement within certain limits, and a decision regarding the move under consideration need not be made in total ignorance of its economic implications.

The Federal Bonus Payable

As noted in the previous discussion of the Federal-Aid Highway Act of 1958, those states entering into agreements with the Secretary of Commerce to control outdoor advertising along the Interstate System consistent with the National Standards are entitled to an additional one half of one per cent of the cost of constructing such portions of highway. Certain sections are ineligible for participation, however, in this bonus.

In a report entitled Study of Proposed Control of Advertising Along the Interstate Highways in Georgia, prepared by the Division of Highway Planning of the State Highway Department of Georgia and dated October 10, 1961, an attempt was made to determine the mileage of Interstate in Georgia which would apply thereto. Briefly, the findings of that study indicated that of a total of 1,108 miles of Interstate Highway within the state, approximately 535 miles, costing an estimated $317,676,000, would be eligible for participation in the increased federal share. On this basis the bonus would amount to approximately $1,588,000.

A study of the method used in that study for determining the total eligible mileage figure leads to a question as to its accuracy, however. The report indicated that approximately 43 miles of Interstate highway within the state were to be constructed upon right-of-way acquired prior to July 1, 1956. There is no doubt but that this mileage should be subtracted from the total in order to arrive at the appropriate figure for the purpose of calculating the federal bonus. But an additional 530 miles, or very nearly one-half of the total mileage of the Interstate System, was also treated as ineligible. It is in connection with these 530 miles of highway that a question arises.

The basis for eliminating these 530 miles of highway from consideration as eligible for the bonus payment appears to have been that they lie within the boundaries of counties in which a planning commission exists and is operative. A close reading of the provisions of the Federal-Aid Highway Act of 1958 which relate to the exemption of areas zoned industrial or commercial, however, does not seem to support such a blanket exclusion. According to the Act, only those segments of highway traversing areas zoned commercial or industrial which lie within the boundaries

of incorporated municipalities (not counties) are ineligible for consideration in determining the amount of the federal bonus payment. As a matter of fact, the term "county" does not appear in this section of the Act.

Thus it is our belief that the original estimate of the total mileage eligible for the federal bonus is overly conservative, although we are not in a position to correct the estimate precisely. If our interpretation of the provisions of the Act is correct, however, it would appear that a new estimate should be drawn up by the Department, in which only those portions of highway traversing areas zoned industrial or commercial which lie within the boundaries of incorporated municipalities are to be excluded, and a revised estimate of the bonus be calculated on this basis. Whatever the result of such a calculation, the original estimate of approximately $1.5 million would certainly seem to be a safe lower limit. An estimate of the upper limit would at this point represent conjecture on our part since data on what proportion of the 530 miles, to be added in, is zoned industrial or commercial are not available.

Whatever the amount of the federal bonus which the State might receive, it will represent an amount to be paid as the highway is constructed. On the other hand, any costs associated with enforcing the National Standards must be paid indefinitely into the future. This distinction raises a question as to the proper way in which to compare these sums. For the sake of simplifying the problem the federal bonus might be regarded as being received in one lump sum on completion of the highway, while the costs of administering the required advertising control system might be thought of as necessitating annual payments in perpetuity.

The purpose of this discussion is simply to examine the criticism which is sometimes heard that although the State stands to gain a sizable sum of money in the first instance, it must obligate itself thereby to pay out money every year forever. Some day, the argument continues, the State will find its bonus "used up," and yet it still must incur administrative expenses in connection with the program. Such a contention may or may not be valid. The key to the problem lies in an implicit assumption as to the use of the funds received initially. If these funds are deposited in a vault, and if the annual administrative costs are paid from the funds in this vault, then surely a day will arrive when the funds are exhausted. If, on the other hand, these funds are invested at a positive rate of interest -- in bonds, for example -- then certainly the administrative costs may be paid for a longer period of time than in the first instance; and if the rate of interest is sufficiently high to provide an annual income at least equal to the administrative costs, then these administrative costs can in fact be paid in perpetuity.

From a realistic point of view, neither of the cases above fit the situation at hand. The federal bonus will not be deposited in a vault, nor will it be invested in bonds. However, it will be invested -- invested in the highway itself. Economists have a difficult enough time calculating the rate of return on the investment in a simple machine tool; they have certainly not as yet progressed in their analysis sufficiently to measure the productivity of a piece of social capital such as a highway. Nevertheless, it appears that the return on dollars invested in the Interstate Highway System, from the public point of view, would be relatively high.

For those wanting something more specific it might be observed that the income from $1.5 million at 4 per cent per annum amounts to $60,000 per year. If one can accept the $1.5 million as constituting the minimum amount of the bonus which would be received, and if 4 per cent does not appear to constitute an excessive estimate of the rate of return to be gained on a project of this type, and if the annual administrative costs of the program are not expected to exceed $60,000, then the proposal would appear to justify undertaking on purely economic grounds.

Costs of Administration

The costs of administering a program of control of outdoor advertising such as that prescribed in the National Standards is particularly difficult to estimate. In an attempt to provide some meaningful indication of the cost which might be involved, a questionnaire was sent to the sixteen states which have already entered into agreements with the Secretary of Commerce regarding this matter. In addition, a questionnaire was mailed to the states of Florida and Virginia which, though they have not as yet entered into such agreements, nevertheless have for the past twenty years carried out a program of control of outdoor advertising. The replies received have been deposited in the files of the Highway Department. The findings of this survey will be summarized briefly below.

It must be noted that several of the states which have elected to accept the National Standards have not had sufficient experience under them to provide meaningful indications of the costs involved. A majority of the states, however, have chosen to establish an administrative agency

(usually within the highway department itself) whose function is to issue permits for the erection of signs along the highway. (Typically a fee averaging about $2 to $3 per sign is involved.) The advantages to such a system are twofold. First, this administrative agency actually performs some of the enforcement function required. Since a permit is required before a sign may be erected, the agency is in a position to determine if the proposed sign conforms in all respects to the National Standards. The problem of removing non-conforming signs is thereby reduced considerably. Second, the fees collected by the agency for the sign permits may be used to offset the costs of administering the program of regulation.

An attempt was made in the survey referred to previously to ascertain the amount of revenues obtained from the issuance of sign permits and the amount of administrative costs entailed by the program. Specific questions were asked regarding the number of new employees required to carry out these functions. The replies received are difficult to summarize because different amounts of mileage were completed and subject to control in the different states. The general conclusion to be drawn, however, appears to be that the administrative problems are not serious ones, the cost is not excessive, and in several cases the revenues are approximately equal to the expenses involved. Frequently the administrative program was taken over by existing employees of the department charged with enforcement, and in no case did the number of additional employees required appear to be excessive.

The experience of Florida and Virginia appears to be of particular value in arriving at any indication of the administrative problems and

costs involved in the control of outdoor advertising. While neither of these states are presently participating in the federal program (Virginia is now taking the necessary steps in this direction) both have had long experience in this area. Florida has been regulating outdoor advertising along all its highways since 1941; Virginia since 1939. Thus within the South we find two states which could serve as a guide to the problems which Georgia might face in this area.

In a communication from Mr. R. L. Nicar, Landscape Engineer for the Department of Highways, State of Virginia, dated October 1, 1962, it is revealed that this State administers controls over outdoor advertising along approximately 51,000 miles of highway. This is accomplished with the use of 24 part-time employees. The approximate direct costs of the program are running about $42,000 annually; the revenues received from fees and permits amount to about $43,300 per year. Virginia seems to have encountered no major problems in connection with administering its program of control.

The information received from the State of Florida is not as complete as that pertaining to the experience of Virginia because of certain changes in the administrative organization charged with enforcing the controls. However in a letter from Mr. A. J. Lewis, Director, Right of Way Division, Florida State Road Department, dated October 12, 1962, it is stated that fees from licenses and permits are currently running about $160,000 annually. While Mr. Lewis was unable to arrive at an accurate figure regarding administrative costs, he did state that the overall costs of enforcing the controls was well within the amount of revenue produced by the fees.

It should be noted that in both of these cases, control was exercised over all State-aid highways and not just the Interstate System. Both Virginia and Florida appear to have been able to operate their programs with no net drain on their State treasuries, and seem to be quite satisfied with the results.

On the basis of the experience, such as it is, which the sixteen states presently operating under the National Standards have had, and in particular in light of the success which Florida and Virginia have enjoyed under a similar situation for the past twenty years, there does not appear to be any reason to assume that administrative problems would be insurmountable should Georgia move to adopt the National Standards. On the contrary, it would seem that such a step could be undertaken in fullest confidence of its success.

The adoption of the National Standards regarding outdoor advertising by Georgia appears to be consistent with the principle of sound fiscal policy on the part of the State. While the economic implications of such a program are but one of a number of factors which must be brought to bear in arriving at a final decision in this matter, it seems reasonable under the circumstances to conclude that these economic considerations do not, at least, militate against such a step.

IV. CONCLUSIONS AND RECOMMENDATIONS

General Recommendation

In the 1961 session of the legislature, House Bill 155 was proposed. This bill was intended to enable the State of Georgia to enter into an agreement with the United States Department of Commerce to adopt billboard controls on the Georgia portion of the Interstate Highway System. At a public hearing on this bill, the views of the State Highway Board were placed in the record. The statement of the Board said in part:

> "The growing use of signs and billboards, and a realization of the extent to which they could obscure the landscape, and draw away from the road the attention of drivers of vehicles, has caused many officials in the Georgia Highway Department and in the various highway departments of the country to favor, and move toward, more controls being set up to hold back or to curtail the display of advertising on private lands, under the view of users of the highways, to reduce hazards in driving and to free up for the traveller the enjoyment of natural tree and plant growth, and topographic features along the way, that would be pleasing and restful to the eye . . .
>
> "Present Federal provisions for bonus payments on account of effective advertising controls on the Interstate System require that agreements must be entered into between the states and the Secretary of Commerce before June 30, 1961. There is now no possibility of Georgia accomplishing an agreement by that time. However, there is a powerful demand from among the State Highway Departments, the nation's garden and other clubs, to have an extension for at least two years included in the currently being considered Federal-Aid Act of 1961, before Congress now.
>
> "If this requested extension to June 30, 1963, or any other date, should be authorized by Congress, this Board is anxious to be in position to proceed with efforts to qualify for the extra funds, but is just as anxious to see that any feasible controls of all advertising along any of the highways under its jurisdiction may be instituted.
>
> "The Highway Department and the Highway Board feel that this matter of billboard control along highways has sufficient potential for preserving and protecting the safety and welfare of the people of this State that, whether there is any Federal bonus such as

proposed on the Interstate system or not, these controls should be made effective along all State-Aid roads by state action, and a study of the possibilities for such legislative action as needed for this purpose is recommended to your Committee for your favorable consideration."[135]

It is evident from this statement that the Highway Board does not consider the bonus provided for in the Highway Act of 1958 to be the sole reason, or even the important reason, for the adoption of some type of protection of Georgia highways. This thinking is sound. While an amount upwards of $1.5 million in savings to Georgia taxpayers is not unimportant, one-half of one per cent of the cost of the Interstate System is hardly a dramatic incentive for making a commitment in perpetuity to a sizeable program of control. Undoubtedly Congress did not intend the bonus to be a bribe but rather a financial reward to assist and encourage the states in undertaking a program that stands on its own merits.

The survey of state practices presented earlier in this report makes it clear that billboard control has been developing in this country for a long period of time. As of the present date Georgia, compared to some other states, has still provided for only a minimum of regulation. The Interstate System is a special type of highway. For this unique network, at least, something more positive is recommended. An impressive list of expert witnesses, members of Southeastern chapters of professional planning societies and architectural institutes, testified at the public hearing on House Bill 155 in favor of adoption of the National Standards.[136]

It would be possible for Georgia to originate its own advertising rules for the Interstate System within its borders -- something other than those prepared, at the direction of Congress, by the United States Department of Commerce. Serious consideration was given to this alternative during the preparation

of this report. But the national character of the Interstate System suggests that a degree of consistency in policy through the voluntary collaboration of state governments is desirable. Such cooperation among autonomous governmental units regarding matters of common interest is not new. Indeed the continuity of the Interstate System itself would not have been possible unless the separate states had agreed to abide by uniform stardards in its layout and construction. The adoption of a common policy with regard to outdoor advertising simply extends this cooperation to land adjacent to the System.

The whole matter of billboard regulation is something about which honest men differ. The decision to regulate or not is ultimately a political decision to be made in the political forum. But the writers of this report feel that if the collective and historic experience of the states with regard to the modern highway has any lesson to communicate, it is that reasonable protection of the people's investment from excessive placement of billboards is both a feasible and a sound policy. With specific reference to the task assigned to this research project, the feasibility of regulation along the Interstate Highway System in Georgia, we feel that the National Standards, based on a plan of voluntary state-federal cooperation, represent as reasonable a program of control as is possible in a situation where sharply conflicting interests exist. It is a program not beyond the limitations of practical administration and a plan to adopt and implement it is worthy of the support of the State Highway Department. <u>This report formally makes this recommendation</u>. With regard to billboards it is particularly true that prevention is the best policy. On July 1 of this year only about 12 per cent of the Interstate System in Georgia was open to traffic. The administrative problem would be greatly simplified if action were taken now before numerous advertising displays are placed on the Interstate System.

General Legal Procedure

This report does not recommend that the State follow a plan of purchasing advertising rights from abutting landowners. The various states were asked in 1956 by the Bureau of Public Roads to estimate the cost of purchasing advertising rights along the Interstate. The average cost as estimated by the states is $7,500 a mile.[137] The cost of such easements vary from state to state and within areas of a given state; further the estimates are, from lack of experience, quite crude. Assuming, however, that this figure has some validity for Georgia, cost of easements for 1,108 miles of highway would total $8,310,000. The Highway Act of 1958 allows for sharing of this cost on a 90-10 basis. The cost to Georgia would be, therefore, $831,000.

In addition to this there would be administrative cost. While it is impossible to estimate the amount involved accurately, it is clear that it would be high, especially for those segments of the Highway where the right-of-way has already been acquired and negotiations for advertising rights would have to be reopened. In addition to the cost involved, the increased volume of legal and administrative work necessary makes it practical to avoid this approach if at all possible. Of the sixteen states that have adopted the National Standards, only six have chosen to use the power of eminent domain and to purchase easements.

The approach that we recommend should be used in Georgia is to base the legislation on the police power. While there can be no certainty in this matter, it is quite possible that the Georgia courts will uphold billboard legislation enacted to promote the safety of the traveller, to maintain the economic values of the State, and to preserve the general beauty of the highway. At the same time the likelihood of a statute's holding up against litigation would be considerably increased if it were backed up by a constitutional amendment authorizing the legislature to regulate billboards.

Specific Recommendations

Laws passed by the sixteen states, and regulations prepared by the designated administrative agency pursuant thereto, mainly incorporate the detailed rules of the National Standards, a copy of which appears in Appendix A. While there is diversity in the various laws, the essential elements are similar. A checklist would include the following items: statement of purpose, specifications for measurement of distance, categories of signs permitted, categories of signs not permitted, and spacing and distance provisions. Kentucky's law and highway department regulations serve as a typical example. A copy is reproduced in Appendix B. It should be noted that Kentucky's regulations are somewhat stricter than those required by the federal government.

The contract between the state and the United States Department of Commerce is completely standardized for all states. A copy of the Connecticut contract appears in Appendix C. The contract requires that the state submit a plan for controlling areas adjacent to Interstate Highways. This consists of a narrative statement setting forth the methods and procedures the state will follow in controlling outdoor advertising and including a set of maps color coded to show the segments of the Interstate System considered eligible for payment of an increased federal share of the cost of construction and the segments not considered eligible. An example of such a narrative statement, Delaware's, appears in Appendix D.

In addition to the regulations required by the federal law, this report recommends that the following detailed provisions be included in a highway bill:

Delegation of Administration to the Highway Department. A specific agency should be designated. The Highway Department is the logical one. This is typical for states that have adopted the plan. To the degree possible, some flexibility

of administration should be provided for so that the Highway Department does not have to go to the legislature every time a slight change in administrative detail is desired. Care has to be exercised, however, that proper guidelines for administration are detailed in the law to prevent the question of improper delegation from arising. An example of providing for flexibility in administration appears in the recommendation below with regard to fees charged for permits.

Delegation of Authority to Enter Into an Agreement With the Secretary of Commerce. This is self-explanatory.

Requirement of Permits. Permits to erect outdoor signs should be required. A separate permit should be demanded for each sign. It should not be transferable. All permits should expire and be subject to renewal annually on a specific date. The fee charged should not be prorated in those cases where a permit will expire before twelve months have elapsed. The permit form used by Wisconsin is included as a sample in Appendix E.

Amount of the Fee. A survey of the states shows a diversity of practices in this matter. A fee of $3.00 is thought to be adequate to cover administrative costs in Georgia. However, since this is a rough estimate not based on actual experience, it would be better if the law authorized the Highway Department to set the amount at a level sufficient to cover costs. If experience showed $3.00 to be inadequate, the fee could easily be changed.

Rule For Allocation of Limited Advertising Spaces. In order that as equitable a method of allocating spaces as possible be used, this report recommends that a procedure similar to the following be included in the bill:

> Applications for available Class 3 and Class 4 sign sites, where the number of applications shall exceed the available sites, shall be awarded upon the following basis:

A. Agencies of the State of Georgia in order of their applications.

B. Counties or incorporated cities in the order of their applications.

C. Federal agencies in the order of their applications.

D. All other applicants in the order of their applications, giving preference, however, to the holder of any existing permit for renewal thereof. Applications received during the Highway Department's normal office hours during the same day shall be construed as having been received simultaneously. In case of a tie between applicants, and upon notification thereof by the Highway Department, the Highway Department shall determine by lot which shall receive the permit.

Tagging of Signs. The holders of permits should be required to attach to the sign a tag provided by the Highway Department containing the permit number, the date of expiration, and the name of the person or firm holding the permit.

Sign Removal Provisions. Signs erected in violation of the regulations should be subject to removal at the expense of the offender 30 days after written notification. Law enforcement officers and Highway Department employees should have authority to enter private property for the purpose of inspecting signs.

Penalties. A fine for violation of the regulations should be specified. As stated above the median fine imposed by states who have adopted the National Standards is approximately in the range of not less than $25 nor more than $500.

Extension of the Standards to All Controlled-Access Highways. The few miles of controlled-access highway not classified as Interstate should be included as subject to the same regulations.

Information Sites Not Recommended. Such sites do not seem practical.

V. CITATIONS

1. This material depends heavily on two excellent surveys: "Outdoor Advertising Along Highways," Highway Research Board, Special Report 41, Washington, 1958; and, "Highway Billboard Control," Illinois Legislative Council, Publication 133, Springfield, Illinois, 1958. To prevent a proliferation of footnotes, page references to the numerous details discussed hereafter are omitted.

2. Highway Research Board, "Outdoor Advertising Along Highways," p. 22.

3. Illinois Legislative Council, "Highway Billboard Control," p. 12.

4. Op. Cit., pp. 12-13, notes 18 and 19.

5. For examples of such ordinances, see the following: "Planning and Zoning," Reprinted From the Charter and Code of the City of Brunswick, Georgia, 1952, Sec. 9; "First Tentative Zoning Ordinance, With Amendments to June 30, 1960," Rome, Georgia, 1948, Sec. 6; "Zoning Ordinance, Moultrie, Georgia," City Planning Commission, Moultrie, Georgia, 1956, Sec. 9.

6. "Proposed Zoning Ordinance of Chatham County, Georgia," Chatham County-Savannah Metropolitan Planning Commission, Feb. 13, 1962, Sec. 7.

7. Acts, 1957, No. 358. For a discussion of this act see: "A Planning Manual for Community Development," Prepared by the Graduate City Planning Program, Georgia Institute of Technology for the Community Development Division, Georgia Power Company, rev. ed., 1959, p. 10.

8. Act, 1957, No. 358, Sec. 8.

9. "Zoning Resolution for Lowndes County, Georgia, Adopted June 6, 1962," Board of Commissioners of Roads and Revenues, Lowndes County, Georgia, p. 26.

10. Twenty-Eighth Report of the State Highway Department of Georgia, For the Fiscal Year Ending June 30, 1959 and June 30, 1960, p. 33.

11. Testimony of the Honorable Sinclair Weeks, Secretary of Commerce, Hearings on Control of Advertising on Interstate Highways, U.S. Senate, 85th Congress, Washington, 1957, p. 3. (Hereafter cited as Hearings.)

12. Testimony of Bertram D. Tallomy, Federal Highway Administrator, loc. cit., p. 22.

13. Op. cit., p. 3.

14. S. 1048, 84th Congress, 1st. Session, p. 9, Sec. 4 a (1955). For a debate on this proposal, see 101 Congressional Record 6784-90 (1955).

15. Cf. Hearings, supra, Note 2.

16. Morton L. Price, "Billboard Regulation Along the Interstate Highway System." 8 Kansas Law Review 96.

17. Federal Highway Act, Section 12, 72 Stat. 89(1958).

18. Cf. James H. Dodd, Outdoor Advertising in Urban Communities and Along Rural Highways, A Thesis Presented to the Faculty of the Graduate Division, Georgia Institute of Technology, 1956, pp. 2-5.

19. Cf. The Outside Story, Outdoor Advertising Association of America, 1954.

20. Price, op. cit. p. 86.

21. Statement of John Dwight Sullivan, General Counsel to the Advertising Federation of America, Hearings, p. 112.

22. Statement of Warner R. Moore, President, Outdoor Advertising, Inc., New York, Hearings, p. 136.

23. O.A.A.A. News, Outdoor Advertising Association of America, April, 1962, p. 5.

24. Section 12 (a), Federal-Aid Highway Act of 1958 (Public Law No. 381, 85th Cong., approved April 16, 1958).

25. Ibid.

26. Ibid.

27. The National Standards are reproduced in an appendix to this report.

28. Section 20.5 (a), National Standards.

29. Section 12 (b), Federal-Aid Highway Act of 1958.

30. 73 Stat. 611.

31. Section 12 (c), Federal-Aid Highway Act of 1958.

32. Public Law No. 843, 87th Cong., approved October 18, 1962.

33. A copy of such an agreement is reproduced in an appendix to this report.

34. Crawford v. City of Topeka, 51 Kan. 756, 33 Pac. 476 (1893); Bryan v. City of Chester, 212 Pa. 259, 61 Atl. 894 (1905); Sign Works v. Training School, 249 Ill. 436, 94 N. E. 920 (1911).

35. Barnett v. Johnson, 15 N. J. Eq. 481, 487-489 (1863).

36. See cases collected in 90 A. L. R. 793 (1934). No Georgia cases cited.

37. Hollomon v. Board of Education of Stewart County, 168 Ga. 359, 147 S. E. 882, 884 (1929); Frye v. Sebbitt, 145 Neb. 600, 17 N. W. 2d 617, 621 (1945).

38. Magnolia Petroleum Co. v. Caswell, Tex., 1 S. W. 2d 597, 600 (1928); Hasselbring v. Koepke, 263 Mich. 466, 248 N. W. 869, 873, 93 A. L. R. 1170 (1933).

39. Cf. Ruth Wilson, "Billboards and Right to be Seen from the Highway," 30 Geo. L. J. 723 (1942).

40. McClintic-Marshall Co. v. Ford Motor Co., 254 Mich. 305, 236 N. W. 792 (1931); Lamb v. Pontiac, Oxford and Northern R.R. Co., 150 Mich. 340, 113 N. W. 1110 (1907); Cadwalader v. Bailey, 17 R. I. 495, 23 Atl. 20 (1891); Wood v. Woodley, 160 N. E. 17, 75 S. E. 719 (1912); Houston v. Zahm, 44 Ore. 610, 76 Pac. 641 (1904).

41. Linthicum v. Ray, 9 Wall. 241, 243 (U.S. 1860); Sullivan Granite Co. V. Vuomo, 48 R. I. 292, 295, 137 Atl. 687, 688 (1927); Houghtaling v. Stoothoff, 170 Misc. 773, 12 N. Y. S. 2d 207 (1937), aff'd 259 App. Div. 854, 19 N. Y. S. 2d 510 (1940); National Silk Dyeing Co. v. Grobart, 117 N. J. Eq. 156, 175 Atl. 91 (1932); McCullough v. Broad Exchange Co., 101 App. Div. 566, 92 N. Y. Supp 533 (1905); aff'd 184 N. Y. 590, 77 N. E. 1191 (1906); Chase v. Cram, 39 R. I. 83, 97 Atl. 481 (1916).

42. 39 R. I. 83, 97 Atl. 481 (1916).

43. Wilson, loc. cit., pp. 738 and 741.

44. Kelbro, Inc. v. Myrick, 113 Vt. 64, 30 A. 2d 527 (1943).

45. Murphy, Inc. v. Town of Westport, 131 Conn. 292, 40 A. 2d 177 (1944); Maryland Advertising Co. v. Mayor and City Council, 86 A. 2d 169 (Md. Ct. App. 1952).

46. Morton L. Price, "Billboard Regulation Along the Interstate Highway System," 8 Kansas Law Review 83, n. 19.

47. Chicago and Alton R.R. v. Tranbarger, 238 U.S. 67, 35 Sup. Ct. 678 (1915).

48. For example, Crawford v. City of Topeka, 51 Kan. 756, 33 Pac. 476 (1890). Cf. Rodda, "The Accomplishment of Aesthetic Purposes Under the Police Power," 27 So. Calif. L. Rev. 149, 178 (1954).

49. Passaic v. Paterson Bill Posting Advertising and Sign Painting Co., 72 N. J. L. 285, 287, 62 Atl. 267, 268 (1905).

50. 235 Mo. 99, 137 S. W. 929 (1911).

51. For a summary of specific police power regulations that have received judicial approval up to 1958, see "Outdoor Advertising Along Highways," Highway Research Board, Special Report 41, Washington, 1958, pp. 46-48.

52. General Outdoor Advertising Co. v. Department of Public Works, 289 Mass. 149, 193 N. E. 799 (1935) appeal dismissed 56 S. Ct. 495 (1936); United Advertising Corp. v. Borough of Raritan, 11 N. J. 144, 93 A. 2d 362 (1952).

53. New Orleans v. Pergament, 198 La. 852, 5 So. 2d 129 (1941); Fred Wolferman Bldg. Co. v. General Outdoor Advertising Co., 30 S. W. 2d 157 (Mo. 1930); General Outdoor Advertising Co. v. Department of Public Works, 289 Mass. 149, 193 N. E. 799 (1935) appeal dismissed 56 S. Ct. 495 (1936); St. Louis Poster Advertising Corp. v. St. Louis, 249 U.S. 269 (1919).

54. 202 Ind. 85, 172 N. E. 309 (1930).

55. Brougher v. Board of Public Works of San Francisco, 107 Cal. app. 15,290 Pac. 140 (1930); Welch v. Swasey, 214 V.5. 91,53 L. Ed. 923 (1909); New Orleans v. Pergament, 198 La. 852, 5 So. 2d 129 (1941); Wulfsohn v. Burden, 241 N. Y. 288, 150 N. E. 120 (1925); Pritz v. Messer, 112 Ohio St. 628, 149 N. E. 30 (1925); West Bros. Brick Co. v. City of Alexandria, 169 Va. 271, 192 S. E. 882 (1937) appeal dismissed 302 U.S. 658 (1937).

56. General Outdoor Advertising Co. v. Department of Public Works, 289 Mass. 149, 193 N. E. 799 (1935); Preferred Tires v. Village of Hempstead, 173 Misc. 1017, 1019, 19 N. Y. S. 2d 374, 377 (Sup. Ct. 1940); Commonwealth v. Tremmer, 53 Dauph 91, 34 Mun. 37 (Pa. Quar. Sess. 1942); Merritt v. Peters, 60 So. 2d 861 (Fla. 1953).

57. 149 Fla. 148, 5 So. 2d 433 (1942).

58. 65 So. 2d 861 (1953). Cf. J. B. Crockett, "Governmental Regulation of Billboard Advertising," 9 Univ. of Fla. L. Rev., 213 (1956).

59. Ware v. City of Wichita, 113 Kan. 153, 160, 214 Pac. 99, 102 (1923).

60. 348 U.S. 26 (1954).

61. State v. Wieland, 269 Wis. 262, 69 N. W. 2d 217 (1955).

62. "Outdoor Advertising Along Highways," Highway Research Board, Special Report 41, Washington, 1958, p. 44.

63. 235 Mo. 99, 137 S. W. 929 (1911).

64. Code 95-2006. For an interpretation of this portion of the Code, cf. Stanfield v. Johnson, 95 Ga. app. 349, 98 S. E. 2d 106 (1957).

65. Adopted by Roadside Business Association, 1952. Reprinted in Hearings, p. 260.

66. ". . . a driver rarely keeps his eyes on the road directly ahead. He must do some observing about him to enjoy driving, to keep awake, and to follow normal habit patterns in use of the eyes developed since childhood." A. R. Lauer and J. Carl McMonagle, "Do Road Signs Affect Accidents?" reprinted in Hearings, p. 269.

67. For a summary of these studies, see Hearings, pp. 240-248 and pp. 268-272.

68. Hearings, p. 272.

69. Cf. Richard E. Barrett and Ross D. Netherton, "Issues and Problems of Proof in Judicial Review of Roadside Advertising Control," Highway Research Board, Washington, 1962, p. 15.

70. For a discussion of this case, see John E. Armstrong, The Wisconsin Billboard Case, State of Wisconsin, 1961, pp. 9-11.

71. Fuller v. Fiedler, Cir. Ct. Dane County, Wisc., Memorandum Opinion, No. 107570 (1961).

72. Ghaster v. Preston, Court of Common Pleas of Allen County, Ohio, Memorandum Opinion No. 46311 (1961).

73. Breard v. Alexandria, 341 U.S. 622 (1951); Martin v. City of Struthers, 319 U.S. 141 (1943).

74. Valentine v. Chrestensen, 316 U.S. 52 (1942); Scheider v. State, 308 U.S. 147 (1939).

75. Packer Corporation v. Utah, 285 U.S. 105 (1932) affirming 78 Utah 177, 2F 2d 114 (1931).

76. General Outdoor Advertising Co. Inc. v. Department of Public Works, 289 Mass. 149, 193 N. E. 799, 808, 813-815 (1935).

77. 189 Mass. 149, 167-169, 193 N. E. 799, 808 (1935).

78. Illinois Legislative Council, "Highway Billboard Control," Publication 133, p. 7.

79. 10 New York 2d, 151; affirmed in 10 New York 2d, 814.

80. Ghaster v. Preston, Court of Common Pleas of Allen County, Ohio, Memorandum Opinion No. 26311 (1961).

81. Fuller v. Fielder, Dane County Circuit Court, Wisconsin, Memorandum Opinion No. 107570 (1961); Ghaster v. Preston, Court of Common Pleas of Allen County, Ohio, Memorandum Opinion No. 46311 (1961); Advisory Opinion of the Justices of the Supreme Court of New Hampshire, 169 Atlantic 2d, 762 (1961).

82. For a detailed analysis, see Barrett and Netherton, "Issues and Problems of Proof in Judicial Review of Roadside Advertising Controls," Highway Research Board, 1962.

83. Op. ct., p. 762.

84. The parts found to be offensive are: Section HY 19.03, subsections 2, 3, and 4, and Section HY 19.05, subsections 4, 6, and 9. Cf. Sec. 84.30, Wis. Stats. (1959).

85. Fuller v. Fiedler, loc. cit.

86. 95 Ga. App. 349, 98 S. E. 2d 106 (1957).

87. 90 Ga. App. 261, 82 S. E. 2d 710 (1954).

88. 212 Ga. 90, 90 S. E. 2d 415 (1955).

89. 156 Ga. 71, 118 S. E. 751 (1923).

90. Jackson v. Beavers, 156 Ga. 71, 75, 118 S. E. 751 (1923).

91. 62 Ga. App. 74, 8 S. E. 2d 146 (1940).

92. Cutsinger v. Atlanta, 142 Ga. 555, 83 S. E. 263 (1914).

93. Mack v. Westbrook, 148 Ga. 690, 98 S. E. 339 (1918).

94. Commissioners of Glynn County v. Cate, 183 Ga. 111, 187 S. E. 636 (1936).

95. DeBerry v. City of LaGrange, 62 Ga. App. 74, 8 S. E. 2d 146 (1940).

96. 187 Ga. 826, 2 S. E. 2d 647 (1939).

97. 161 Ga. 769, 132 S. E. 66 (1925).

98. 162 Ga. 228, 133 S. E. 345 (1926).

99. Acts, 1927, pp. 127, 128.

100. Cf. Annotated Code, Sec. 2-1923, Editorial Note.

101. 172 Ga. 833, 159 S. E. 401 (1930).

102. For the major zoning cases following Howden v. Savannah, see; McCord v. Bond and Condon Co., 175 Ga. 667, 165 S. E. 590 (1932); Schofield v. Bishop, 192 Ga. 732, 16 S. E. 2d 714 (1941); Snow v. Johnson, 197 Ga. 146, 28 S. E. 2d 270 (1943); Lewenstein v. Brown, 200 Ga. 433, 37 S. E. 2d 332 (1946); Morgan v. Thomas, 207 Ga. 660, 63 S. E. 2d 659 (1951); Birdsey v. Wesleyan College, 211 Ga. 583, 87 S. E. 2d 378 (1955); Neal v. City of Atlanta, 212 Ga. 687, 94 S. E. 2d 867 (1956); Vulcan Materials Co. v. Griffith, 215 Ga. 811, S. E. (1960).

103. Loc. cit.

104. 211 Ga. 583, 87 S E. 2d 378 (1955).

105. 197 Ga. 146, 28 S. E. 270 (1943).

106. 211 Ga. 583, 87 S. E. 2d 378 (1955).

107. 212 Ga. 687, 94 S. E. 2d 867 (1956).

108. 175 Ga. 667, 165 S. E. 590 (1932).

109. 83 Ga. App. 508, 64 S. E. 2d 344 (1951).

110. McWhorter, Mayor, et al. v. Settle, 202 Ga. 334, 43 S. E. 2d 247 (1947).

111. Jackson v. Beavers, 156 Ga. 71, 118 S. E. 751 (1923).

112. 142 Ga. 555, 83 S. E. 263 (1914).

113. Cutsinger v. City of Atlanta, loc. cit.

114. Jones v. City of Atlanta, 51 Ga. App. 218, 179 S. E. 922 (1935).

115. Bramley v. the State, 187 Ga. 826, 2 S. E. 2d 647 (1939).

116. Sec. 72-101.

117. Holman v. Athens Empire Laundry Co., 149 Ga. 345, 100 S. E. 207 (1919).

118. Standard Oil Co. v. Hahn, 165 Ga. 575, 141 S. E. 643 (1927); Wilson v. Evans Hotel Co., 188 Ga. 498, 4 S. E. 2d 155 (1939).

119. Harper v. Nashville, 136 Ga. 141, 70 S. E. 1102 (1911); Hallman v. Atlanta Child's Home, 161 Ga. 247, 130 S. E. 814 (1927).

120. 62 Ga. App. 74, 8 S. E. 2d 146 (1940).

121. Clay v. Mathews, 185 Ga. 279, 194 S. E. 172 (1937).

122. 189 Ga. 390, 5 S. E. 2d 874 (1939).

123. 154 La. 271, 97 So. 440 (1923).

124. 62 Ga. App. 74, 76, 8 S. E. 2d 146, 149 (1940).

125. W. B. Keeling, "Travel Survey of Georgia, 1960-1961," Bureau of business Research, The University of Georgia, 1961, p. 3.

126. Op. cit., p. 11.

127. Charles S. Rhyne, Municipal Law, Washington: National Institute of Municipal Law Officers, 1957, p. 811.

128. Ibid.

129. Herrod v. O'Beirne, 210 Ga. 476, 80 S. E. 2d 684 (1954).

130. Grant v. Baltimore, 129 A. 2d 369 (1957).

131. Stoner McCray System v. Des Moines, 78 N. W. 2d 843 (1956).

132. 142 Ga. 555, 83 S. E. 263 (1914).

133. 192 Ga. 732, 16 S. E. 2d 714 (1941).

134. 51 Ga. App. 218, 179 S. E. 922 (1935).

135. "Statement of the State Highway Board of Georgia to the House Billboard Study Committee at the Public Hearing," Thursday, 2:00 P.M., June 15, 1961, pp. 3-4, 9-10.

136. Report of Billboard Study Committee, House Resolution 155, 1961.

137. See the comments of the Honorable Bertram D. Tallamy, Hearings, p. 21.

APPENDIX EXHIBITS

A. NATIONAL STANDARDS

B. KENTUCKY BILLBOARD LAW AND HIGHWAY DEPARTMENT REGULATIONS

C. CONNECTICUT OUTDOOR ADVERTISING CONTROL AGREEMENT

D. DELAWARE PLAN FOR CONTROLLING OUTDOOR ADVERTISING

E. WISCONSIN APPLICATION FOR PERMIT

APPENDIX A. NATIONAL STANDARDS

U. S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS

Reprint from Federal Register 23 F. R. 8793, November 13, 1958, as amended, 25 F. R. 218, January 12, 1960 - 25 F. R. 2575, March 26, 1960

TITLE 23—HIGHWAYS

Chapter I—Bureau of Public Roads, Department of Commerce

PART 20—NATIONAL STANDARDS FOR REGULATION BY STATES OF OUTDOOR ADVERTISING SIGNS, DISPLAYS AND DEVICES ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

Sec.

AUTHORITY: §§ 20.1 to 20.10 issued under sec. 131, 72 Stat. 904; 23 U. S. C. 131.

§ 20.1 *Purpose.* (a) In Title 23, United States Code, section 131, hereinafter called the "act", the Congress has declared that:

(1) To promote the safety, convenience, and enjoyment of public travel and the free flow of interstate commerce and to protect the public investment in the National System of Interstate and Defense Highways, hereinafter called the "Interstate System", it is in the public interest to encourage and assist the States to control the use of and to improve areas adjacent to such system by controlling the erection and maintenance of outdoor advertising signs, displays and devices adjacent to that system.

(2) It is a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within six hundred and sixty feet of the edge of the right-of-way and visible from the main-traveled way of all portions of the Interstate System constructed upon any part of right-of-way, the entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary of Commerce.

(b) The standards in this part are hereby promulgated as provided in the act.

§ 20.2 *Definitions.* The following terms when used in the standards in this part have the following meanings:

(a) "Acquired for right-of-way" means acquired for right-of-way for any public road by the Federal Government, a State, or a county, city or other political subdivision of a State, by donation, dedication, purchase, condemnation, use, or otherwise. The date of acquisition shall be the date upon which title (whether fee title or a lesser interest) vested in the public for right-of-way purposes under applicable Federal or State law.

(b) "Centerline of the highway" means a line equidistant from the edges of the median separating the main-traveled ways of a divided Interstate highway, or the centerline of the main-traveled way of a non-divided Interstate highway.

(c) "Controlled portion of the Interstate System" means any portion which

(1) Is constructed upon any part of right-of-way, the entire width of which is acquired for right-of-way subsequent to July 1, 1956 (a portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the centerline of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956);

(2) Lies within a State, the highway department of which has entered into an agreement with the Secretary of Commerce as provided in the act; and

(3) Is not excluded under the terms of the act which provide that agreements entered into between the Secretary of Commerce and the State highway department shall not apply to those segments of the Interstate System which traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use as of September 21, 1959, was clearly established by State law as industrial or commercial. [1]

(d) "Entrance roadway" means any public road or turning roadway, including acceleration lanes, by which traffic may enter the main-traveled way of an Interstate highway from the general road system within a State, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.

[1] Effective date January 12, 1960

(e) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) "Exit roadway" means any public road or turning roadway, including deceleration lanes, by which traffic may leave the main-traveled way of an Interstate highway to reach the general road system within a State, irrespective of whether traffic may also enter the main-traveled way by such road or turning roadway.

(g) "Informational site" means an area or site established and maintained within or adjacent to the right-of-way of a highway on the Interstate System by or under the supervision or control of a State highway department, wherein panels for the display of advertising and informational signs may be erected and maintained.

(h) "Legible" means capable of being read without visual aid by a person of normal visual acuity.

(i) "Maintain" means to allow to exist.

(j) "Main-traveled way" means the traveled way of an Interstate highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(k) "Protected areas" means all areas inside the boundaries of a State which are adjacent to and within six hundred and sixty feet of the edge of the right-of-way of all controlled portions of the Interstate System within that State. Where a controlled portion of the Interstate System terminates at a State boundary which is not perpendicular or normal to the centerline of the highway, "protected areas" also means all areas inside the boundary of such State which are within six hundred and sixty feet of the edge of the right-of-way of the Interstate highway in the adjoining State.

(l) "Scenic area" means any public park or area of particular scenic beauty or historical significance designated by or pursuant to State law as a scenic area.

(m) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of a controlled portion of the Interstate System.

(n) "State" means the District of Columbia and any State of the United States within the boundaries of which a portion of the Interstate System is located.

(o) "State law" means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to State constitution or statute.

(p) "Trade name" shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

(q) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(r) "Turning roadway" means a connecting roadway for traffic turning between two intersection legs of an interchange.

(s) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

§ 20.3 *Measurements of distance.* (a) Distance from the edge of a right-of-way shall be measured horizontally along a line normal or perpendicular to the centerline of the highway.

(b) All distances under § 20.7 (a) (2) and (b) shall be measured along the centerline of the highway between two vertical planes which are normal or perpendicular to and intersect the centerline of the highway, and which pass through the termini of the measured distance.

§ 20.4 *Signs that may not be permitted in protected areas.* Erection or maintenance of the following signs may not be permitted in protected areas:

(a) Signs advertising activities that are illegal under State or Federal laws or regulations in effect at the location of such signs or at the location of such activities,

(b) Obsolete signs,

(c) Signs that are not clean and in good repair,

(d) Signs that are not securely affixed to a substantial structure, and

(e) Signs that are not consistent with the standards in this part.

§ 20.5 *Signs that may be permitted in protected areas.* (a) Erection or maintenance of the following signs may be permitted in protected areas:

Class 1—Official signs. Directional or other official signs or notices erected and maintained by public officers or agencies pursuant to and in accordance with direction or authorization contained in State or Federal law, for the purpose of carrying out an official duty or responsibility.

Class 2—On premise signs. Signs not prohibited by State law which are consistent with the applicable provisions of this section and § 20.8 and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located. Not more than one such sign advertising the sale or lease of the same property may be

permitted under this Class in such manner as to be visible to traffic proceeding in any one direction on any one Interstate highway.

Not more than one such sign, visible to traffic proceeding in any one direction on any one Interstate highway and advertising activities being conducted upon the real property where the sign is located, may be permitted under this Class more than 50 feet from the advertised activity.

Class 3—Signs within 12 miles of advertised activities. Signs not prohibited by State law which are consistent with the applicable provisions of this section and §§ 20.6, 20.7 and 20.8 and which advertise activities being conducted within 12 air miles of such signs.

Class 4—Signs in the specific interest of the traveling public. Signs authorized to be erected or maintained by State law which are consistent with the applicable provisions of this section and §§ 20.6, 20.7 and 20.8 and which are designed to give information in the specific interest of the traveling public.

(b) A Class 2 or 3 sign, except a Class 2 sign not more than 50 feet from the advertised activity, that displays any trade name which refers to or identifies any service rendered or product sold, used or otherwise handled more than 12 air miles from such sign may not be permitted unless the name of the advertised activity which is within 12 air miles of such sign is displayed as conspicuously as such trade name.

(c) Only information about public places operated by Federal, State or local governments, natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation, and places for camping, lodging eating and vehicle service and repair is deemed to be in the specific interest of the traveling public. For the purposes of the standards in this part, a trade name is deemed to be information in the specific interest of the traveling public only if it identifies or characterizes such a place or identifies vehicle service, equipment, parts, accessories, fuels, oils or lubricants being offered for sale at such a place. Signs displaying any other trade name may not be permitted under Class 4.

(d) Notwithstanding the provisions of paragraph (b) of this section, Class 2 or Class 3 signs which also qualify as Class 4 signs may display trade names in accordance with the provisions of paragraph (c) of this section.

§ 20.6 *Class 3 and 4 signs within informational sites.* (a) Informational sites for the erection and maintenance of Class 3 and 4 advertising and informational signs may be established in accordance with the Regulations for the Administration of Federal-Aid for Highways. The location and frequency of such sites shall be as determined by agreements between the Secretary of Commerce and the State highway departments.

(b) Class 3 and 4 signs may be permitted within such informational sites in protected areas in a manner consistent with the following provisions:

(1) No sign may be permitted which is not placed upon a panel.

(2) No panel may be permitted to exceed 13 feet in height or 25 feet in length, including border and trim, but excluding supports.

(3) No sign may be permitted to exceed 12 square feet in area, and nothing on such sign may be permitted to be legible from any place on the main-traveled way or a turning roadway.

(4) Not more than one sign concerning a single activity or place may be permitted within any one informational site.

(5) Signs concerning a single activity or place may be permitted within more than one informational site, but no Class 3 sign which does not also qualify as a Class 4 sign may be permitted within any informational site more than 12 air miles from the advertised activity.

(6) No sign may be permitted which moves or has any animated or moving parts.

(7) Illumination of panels by other than white lights may not be permitted, and no sign placed on any panel may be permitted to contain, include, or be illuminated by any other lights, or any flashing, intermittent, or moving lights.

(8) No lighting may be permitted to be used in any way in connection with any panel unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

§ 20.7 *Class 3 and 4 signs outside informational sites.* (a) The erection or maintenance of the following signs may be permitted within protected areas, outside informational sites:

(1) Class 3 signs which are visible only to Interstate highway traffic not served by an informational site within 12 air miles of the advertised activity;

(2) Class 4 signs which are more than 12 miles from the nearest panel within an informational site serving Interstate highway traffic to which such signs are visible.

(3) Signs that qualify both as Class 3 and 4 signs may be permitted in accordance with either subparagraph (1) or (2) of this paragraph.

(b) The erection or maintenance of signs permitted under paragraph (a) of this section may not be permitted in any manner inconsistent with the following:

(1) In protected areas in advance of an intersection of the main-traveled way of an Interstate highway and an exit roadway, such signs visible to Interstate highway traffic approaching such intersection may not be permitted to exceed the following number:

Distance from intersection:	*Number of signs*
0–2 miles	0.
2–5 miles	6.
More than 5 miles	Average of one sign per mile.

The specified distances shall be measured to the nearest point of the intersection of the traveled way of the exit roadway and the main-traveled way of the Interstate highway.

(2) Subject to the other provisions of this paragraph, not more than two such signs may be permitted within any mile distance measured from any point, and no such signs may be permitted to be less than 1,000 feet apart.

(3) Such signs may not be permitted in protected areas adjacent to any Interstate highway right-of-way upon any part of the width of which is constructed an entrance or exit roadway.

(4) Such signs visible to Interstate highway traffic which is approaching or has passed an entrance roadway may not be permitted in protected areas for 1,000 feet beyond the furthest point of the intersection between the traveled way of such entrance roadway and the main-traveled way of the Interstate highway.

(5) No such signs may be permitted in scenic areas.

(6) Not more than one such sign advertising activities being conducted as a single enterprise or giving information about a single place may be permitted to be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one Interstate highway.

(c) No Class 3 or 4 signs other than those permitted by this section may be permitted to be erected or maintained within protected areas, outside informational sites.

§ 20.8 *General provisions.* No Class 3 or 4 sign may be permitted to be erected or maintained pursuant to § 20.7, and no Class 2 sign may be permitted to be erected or maintained, in any manner inconsistent with the following:

(a) No sign may be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.

(b) No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(c) No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.

(d) No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(e) No sign may be permitted which moves or has any animated or moving parts.

(f) No sign may be permitted to be erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(g) No sign may be permitted to exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim but excluding supports, except Class 2 signs not more than 50 feet from, and advertising activities being conducted upon, the real property where the sign is located.

§ 20.9 *Exclusions.* The standards in this part shall not apply to markers, signs and plaques in appreciation of sites of historical significance for the erection of which provisions are made in an agreement between a State and the Secretary of Commerce, as provided in the Act, unless such agreement expressly makes all or any part of the standards applicable. [1]

§ 20.10 *State regulations.* A State may elect to prohibit signs permissable under the standards in this part without forfeiting its rights to any benefits provided for in the act.

Dated: November 10, 1958.

Recommended:

B. D. TALLAMY,
Federal Highway Administrator.

Issued:

SINCLAIR WEEKS,
Secretary of Commerce.

[F. R. Doc. 58-9440; Filed, Nov. 10, 1958; 12:43 p. m.]

[1] Effective date March 26, 1960

49115 U. S. Comm-DC

APPENDIX B. KENTUCKY BILLBOARD LAW AND HIGHWAY DEPARTMENT REGULATIONS

BILLBOARD ADVERTISING LAW

177.830 Definitions for KRS 177.830 to 177.890. As used in KRS 177.830 to 177.890, unless the context requires otherwise:

(1) "Limited-access highway" means a road or highway or bridge constructed pursuant to the provisions of KRS 177.220 through 177.310;

(2) "Interstate highway" means any highway, road, street, access facility, bridge or overpass which is designated as a portion of the National System of Interstate and Defense Highways as may be established by law, or as may be so designated by the Department of Highways in the joint construction of the system by the Department of Highways and the United States Department of Commerce, Bureau of Public Roads;

(3) "Turnpike" means any road or highway or appurtenant facility constructed pursuant to the provisions of KRS 177.390 through 177.570, or pursuant to the provisions of any other definition of "turnpike" in the Kentucky Revised Statutes, or any other highway, road, parkway, bridge or street upon which a toll or fee is charged for the use of motor vehicular traffic;

(4) "Advertising device" means any billboard, sign, notice, poster, display or other device intended to attract the attention of operators of motor vehicles on the highways, and shall include a structure erected or used in connection with the display of any such device and all lighting or other attachments used in connection therewith. However, it does not include directional or other official signs or signals erected by the state or other public agency having jurisdiction;

(5) "Highway or highways" as used in KRS 177.830 to 177.890 means limited access highway, interstate highway, or turnpike as defined in KRS 177.830 to 177.890.

177.840 Billboard advertising prohibited; exception. (1) Except as provided in subsection (2) of this section and as otherwise provided in KRS 177.830 to 177.890, the erection or maintenance of any advertising device upon or within six hundred and sixty feet of the right of way of any interstate highway, limited-access highway or turnpike is prohibited.

(2) Any advertising device in existence on March 1, 1960, within six hundred and sixty feet of the right of way of any interstate highway, limited-access highway or turnpike may continue to be maintained for a period of five years after that date, but may not be replaced or relocated.

177.850 Purpose of KRS 177.830 to 177.890. The general purposes of KRS 177.830 to 177.890 and its specific objectives and standards are:

(1) To provide for maximum visibility along interstate highways, limited-access highways, and turnpikes, and connecting roads or highways;

(2) To prevent unreasonable distraction of operators of motor vehicles;

(3) To prevent confusion with regard to traffic lights, signs or signals or otherwise interfere with the effectiveness of traffic regulations;

(4) To preserve and enhance the natural scenic beauty or the aesthetic features of the aforementioned interstate highways, limited-access highways and turnpikes, and adjacent areas;

(5) To promote maximum safety, comfort and well-being of the users of the said highways.

177.860 Standards for billboard advertising. The Commissioner of Highways shall prescribe by regulations reasonable standards for the advertising devices hereinafter enumerated, designed to protect the safety of the users of the highways and otherwise to achieve the objectives set forth in KRS 177.850, and the erection and maintenance of any of the following advertising devices, if they comply with such regulations, shall not be deemed a violation of KRS 177.830 to 177.890:

(1) An advertising device which is to be erected or maintained on property for the purpose of setting forth or indicating:

(a) The name and address of the owner, lessee or occupant of such property; or

(b) The name or type of business or profession conducted on such property; or

(c) Information required or authorized by law to be posted or displayed thereon.

(2) An advertising device which is not visible from any traveled portion of the highway;

(3) An advertising device indicating the sale or leasing of the property upon which it is placed;

(4) Advertising devices which otherwise comply with the applicable zoning ordinances and regulations of any county or city, and which are to be located in a commercially or industrially developed area, in which the Commissioner of Highways determines, in exercise of his sound discretion, that the location of such advertising devices is compatible with the safety and convenience of the traveling public.

177.870 Violations declared a public nuisance. Any advertising device erected, maintained, replaced, relocated, repaired or restored in violation of KRS 177.830 to 177.890 is hereby declared to be, and is, a public nuisance and such device may without notice be abated and removed by any officer or employe of the State Department of Highways or upon request of the commissioner by any peace officer.

177.880 Construction of KRS 177.830 to 177.890. Nothing in KRS 177.830 to 177.890 shall be construed to abrogate or affect the provisions of any municipal ordinance, regulation or resolution which is more restrictive concerning advertising devices than the provisions of KRS 177.830 to 177.890 or of the regulations adopted hereunder.

177.890 Agreements with United States authorized. The Commissioner of Highways is hereby authorized to enter into agreements with the United States Secretary of Commerce for the purpose of carrying out the national policy of promoting the safety, convenience and enjoyment of public travel and the free flow of interstate commerce and the protection of the public investment in the National System of Interstate and Defense Highways within the Commonwealth.

PENALTIES

177.990 Penalties. (2) Any person who willfully violates any of the provisions of KRS 177.830 to 177.890 shall, in addition to any other penalty herein provided, be fined not less than one hundred dollars nor more than five hundred dollars.

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF HIGHWAYS
FRANKFORT, KENTUCKY

PURSUANT TO THE AUTHORITY CONTAINED IN KRS 177.830 ET SEQ THE REGULATIONS CONCERNING ADVERTISING DEVICES IN PROXIMITY TO LIMITED ACCESS, INTERSTATE OR TURNPIKE HIGHWAYS AS DECLARED IN OFFICIAL ORDER NO. 63878 ARE HEREBY AMENDED SO AS WHEN AMENDED WILL READ AS FOLLOWS:

B.B.-2 OFFICIAL ORDER NO. _____

RE: ADVERTISING DEVICES ON LIMITED ACCESS AND INTERSTATE HIGHWAY OR TURNPIKE

Relates to: Chapter 175, Acts of 1960 (KRS 177.830 to KRS 177.990-2)

Pursuant to authority of: KRS 177.860

SECTION I. DEFINITIONS

The following terms when used in these regulations shall have the following meanings:

(a) "Advertising device" shall have the same meaning ascribed thereto by Chapter 175, Acts of 1960. (KRS 177.830-4)

(b) "Centerline of the highway" means a line equal distance from the edges of the median separating the main-traveled ways of a divided highway, or the centerline of the main-traveled way of a non-divided.

(c) "Highway or highways" means limited access highway, interstate highway or turnpike, unless the context requires otherwise.

(d) "Limited access highway" means a road or highway or bridge constructed pursuant to the provisions of KRS 177.220 through 177.310.

(e) "Turnpike" means any road or highway or appurtenant facility constructed pursuant to the provisions of KRS 177.390 through 177.570, or pursuant to the provisions of any other definition "turnpike" in the Kentucky Revised Statutes, or any other highway, road, parkway, bridge or street upon which a toll or fee is charged for the use of motor vehicular traffic.

(f) "Interstate highway" means any highway, road, street, access facility, bridge or overpass which is designed as a portion of the National System of Interstate and Defense Highways as may be established by law, as may be so designed by the Department of Highways in the joint construction of the system by the Department of Highways and the United States Department of Commerce, Bureau of Public Roads.

(g) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish.

(h) "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(i) "Maintain" means to allow to exist.

(j) "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of a separated roadway for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(k) "Protected areas" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet of the edge of the right of way of all Interstate highways, limited access highways and turnpikes within the Commonwealth. Where such a highway terminates at a State boundary which is not perpendicular or normal to the centerline of the highways, "Protected areas" also means all areas inside the boundaries of the Commonwealth which are within 660 feet of the edge of the right of way of an Interstate highway in an adjoining state.

(l) "Sign" means "advertising device" as defined in Chapter 175, Acts of 1960. (KRS 177.830-4).

(m) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(n) "Turning roadway" means a connecting roadway for traffic turning between two intersecting lanes of an interchange.

(o) "Visibility" means capable of being seen (whether or not legible without visual aid by a person of normal visual acuity).

(p) (1) "Commercially or industrially developed area" means:

(i) Any area within 100 feet of, and including, any area where there are located within the protected area at least ten (10) separate commercial or industrial enterprises, not one of the structures from which one of such enterprises is being conducted is located at a distance greater than 1620 feet from any other structure from which one of the other enterprises is being conducted; and

(ii) The land use for the area described in (i) as of September 21, 1959 was clearly established by state law as industrial or commercial or the land use for such area was within an incorporated municipality and zoned for commercial and industrial use as of September 21, 1959; and

(iii) No less than ten (10) such enterprises referred to in (i) are, and were on March 10, 1960, located consistent with state and local zoning laws and regulations.

(2) "Commercial or industrial enterprise" as used in this definition means any activity carried on for financial gain except that it shall not include the leasing of property for residential purposes, any agricultural activity or animal husbandry or the operation or maintenance of advertising devices.

SECTION II. MEASUREMENTS OF DISTANCE

(a) Distance from the edge of a right of way shall be measured horizontally along a line normal or perpendicular to the centerline of a highway. All longitudinal distances shall be measured along the centerline of the highway between two vertical planes which are normal or perpendicular to and intersect the centerline of the highway, and shall pass through the termini of the measured distance.

(b) For the purpose of measuring distances for the computation of a commercially or industrially developed area, two lines shall be drawn perpendicular to the center line of the highway, each 100 feet from such separate establishment within the commercially or industrially developed area as will cause the two lines to embrace the greatest longitudinal distance along the center line of said highway. All areas within the confines of said lines perpendicular to the centerline of the highway shall be considered a part of the commercially or industrially developed area.

SECTION III. SIGNS THAT MAY NOT BE PERMITTED IN PROTECTED AREAS

Erection or maintenance of the following signs may not be permitted in protected areas:

(a) Signs advertising an activity that is illegal under State or Federal law

(b) Obsolete signs.

(c) Signs that are not clean and in good repair.

(d) Signs that are not securely affixed to a substantial structure.

(e) Signs constructed after March 1, 1960, unless otherwise permitted under these regulations.

(f) Signs illuminated by other than white lights, unless such signs are located in a commercially or industrially developed area.

(g) Signs that are not consistent with the standards in this section.

(h) Signs which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or device.

(i) Signs which prevent the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(j) Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights, unless such signs are located in a commercially or industrially developed area and otherwise conform to these regulations.

(k) Signs which use lighting in any way, unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System or unless it is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(l) Signs which move or have any animated or moving parts, unless such signs are located in a commercially or industrially developed area, and otherwise conform to these regulations.

(m) Signs erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(n) Signs exceeding 1,250 square feet in area, including border and trim but excluding supports.

(o) Signs not permitted by, or signs not conforming with local zoning or local building restrictions.

(p) Signs closer than 50 feet to the edge of the main-traveled way of any Interstate or limited access highway or turnpike.

SECTION IV. SIGNS THAT MAY BE PERMITTED IN PROTECTED AREAS.

(a) Erection or maintenance of the following signs may be permitted in protected areas:

CLASS 1 - Signs Erected Prior to March 1, 1960.

Signs which have been erected prior to March 1, 1960, may continue to be maintained until and including March 1, 1965. Thereafter, unless such signs are permitted by these regulations, they shall be removed.

CLASS 2 - On Premise Signs.

(a) Signs may be located within protected areas where such signs:

(1) Are for the purpose of setting forth the name or type of business or profession conducted on such property on which the sign is located; or

(2) Post information required or authorized by law to be posted or displayed thereon; or

(3) Consist of an advertising device which is not legible from any traveled portion of the highway; or

(4) Indicate the sale or leasing of the property upon which they are located.

(b) Except in commercially or industrially developed areas, no Class 2 sign shall be located off the premises upon which the activity advertised is being conducted unless such sign complies with (3) above.

(c) No more than one such sign advertising the sale or lease of the same property may be permitted under this class in such manner as to be legible to traffic proceeding in any one direction on any one Interstate highway, limited access highway or turnpike.

(d) Except in commercially or industrially developed areas, no Class 2 sign described in paragraph (a) (4) of this subsection shall exceed 20 feet in length, width or height or 150 square feet in area, including border and trim but excluding supports.

(e) Except in commercially or industrially developed areas, no Class 2 sign may be located more than 50 feet from the advertised activity unless such sign is not legible from any portion of the traveled way of an Interstate highway, limited access highway or turnpike.

CLASS 3 - Signs in Commercially or Industrially Developed Areas.

Signs which are located in protected areas which are industrially or commercially developed areas as defined in these regulations may be constructed and maintained if such signs otherwise comply with Section III of these regulations and other applicable state, county or city zoning ordinances or regulations.

Signed and approved by me this 3rd day of April, 1961.

HENRY WARD
COMMISSIONER OF HIGHWAYS

APPROVED:

H. D. Reed, Jr.
Assistant Attorney General

APPENDIX C. CONNECTICUT OUTDOOR ADVERTISING CONTROL AGREEMENT

AGREEMENT
OUTDOOR ADVERTISING CONTROL
NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

THIS AGREEMENT, made and concluded this 23 day of June A.D. 1961, by and between the State of Connecticut, acting herein by Howard S. Ives, State Highway Commissioner, hereinafter referred to as the State, and the United States Secretary of Commerce, acting herein by Rex M. Whitton, the Federal Highway Administrator, hereunto duly authorized, hereinafter referred to as the Administrator.

WITNESSETH: THAT WHEREAS, in order to promote the safety, convenience and enjoyment of public travel and the free flow of Interstate commerce, and to protect the public investment in the National System of Interstate and Defense Highways, hereinafter referred to as the "Interstate System", the State and the Administrator hereby agree as follows:

1. Definitions: (a) The term "Federal Act" means Section 131 of Title 23 U. S. Code, and any revisions or amendments thereto.

(b) The term "State Act" means Section 13-102a of the 1959 Supplement to the General Statutes, and any revisions or amendments thereto.

(c) The term "national standards" means the National Standards for Regulation by States of Outdoor Advertising Signs, Displays and Devices Adjacent to the National System of Interstate and Defense Highways promulgated by the Secretary of Commerce pursuant to the Federal Act, and in effect on the date of this agreement. Said national standards, as they were published in the Federal Register on November 13, 1958, (23 F.R. 8793) and any revisions or amendments thereto, are hereby incorporated herein by reference.

(d) Unless the context requires otherwise, the terms used herein shall have the same meaning as in the Federal Act and the national standards.

2. Scope of Agreement: Except as otherwise expressly set forth herein, this Agreement shall apply to areas adjacent to all portions of Interstate System highways within the State that are constructed upon any part of a right of way, the entire width of which has been acquired subsequent to July 1, 1956. The said areas (hereinafter designated "Adjacent Areas") are those within 660 feet of the edge of the right of way of Interstate System highways, determined in accordance with the national standards.

There shall be excluded from application of the said national standards any segments of the Interstate System which traverse commercial or industrial zones within the boundaries of Connecticut towns as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use, as of September 21, 1959, was clearly established by State law as industrial or commercial.

3. State's Obligation: The State hereby agrees that, in accordance with the terms of this Agreement, it will control or cause to be controlled the erection and maintenance of outdoor advertising signs, displays and devices in Adjacent Areas within such State consistent with the Federal Act and the national standards.

4. Plan for Controlling Adjacent Areas: The State further agrees that its control of Adjacent Areas shall, as a minimum, be in conformity with the Federal Act, and the national standards, and shall be carried out pursuant to the Plan.

5. Exceeding of Standards: Nothing contained herein shall prohibit the State from exercising control of outdoor advertising signs to a greater degree than that required or contemplated by the national standards and the Federal Act.

6. Plan for Controlling Areas Adjacent to Interstate Highways: State has presented or will present a "Plan for Controlling Areas Adjacent to Interstate Highways." The Plan shall consist of a narrative statement setting forth the methods and procedures the State will follow in controlling outdoor advertising, and shall include a set of maps color coded to show the segments of the Interstate System considered eligible for payment of an increased Federal share of the cost of construction, and the segments which are not considered eligible. The State shall promptly submit to the Administrator additions to or amendments of the Plan when the selection, designation, or modification of Interstate highway routes or other reasons make such action necessary or desirable. The State may from time to time submit to the Administrator any proposals for amendment of the Plan. If approved by the Administrator, such additions or amendments shall become a part of the Plan.

7. Increase of Share: The Federal share, payable on account of any project on the Interstate System provided for by funds authorized under Section 108 of the Federal Aid Highway Act of 1956, as amended, to which the Federal Act, the national policy, and this agreement apply, shall be increased by one-half (1/2) of one (1) percentum, or any greater percentage authorized by Federal law, of the total cost thereof, if and when funds are appropriated and made available for such purpose, and such increase shall be hereinafter called the "bonus award." However, no additional cost that may be incurred in carrying out this Agreement, no cost incurred in connection with any segment of highway excluded from the application of the national standards, and no cost of any project not payable from funds authorized by section 108 of the Federal-Aid Highway Act of 1956, as amended, shall be included in such total for purposes of determining the amount of such increase.

8. The Obligation of the Federal Government: Notwithstanding any other provision of this Agreement, the United States shall not be required to make any payments hereunder unless and until Federal funds are duly appropriated in amounts sufficient to enable the Administrator to make payments as provided in this Agreement.

9. Payment Upon Evidence of Compliance: Payment of the Bonus Award will be made by the Administrator from funds appropriated and available for such purpose with respect to any project upon the submission by the State to the Administrator of a satisfactory showing that the State has fulfilled its obligations under this Agreement in connection with such project, that such project is completed, and that State is continuing to carry out its obligations hereunder with reference to all other highways on the Interstate System.

Advertising signs, displays or devices shall be removed, or caused to be removed, by State as follows:

(a) No outdoor advertising sign, display or device which is inconsistent with the Federal Act or the national standards whall be allowed to remain after July 1, 1964, in areas adjacent to any segment of the Interstate System which, prior to July 1, 1961, either has been completed to the geometric and design standards adopted for that system, or is under contract for completion to such standards.

(b) No outdoor advertising sign, display or device which is inconsistent with the Act or the national standards shall be allowed to remain in areas adjacent to any segment of the Interstate System after the date upon which the State

highway department has accepted, as completed, a contract awarded on or after July 1, 1961, for the completion of such segment to the geometric and design standards approved for the Interstate System.

No part of the Bonus Award payable under the Federal Act shall be paid to a State highway department on account of any project until outdoor advertising in areas adjacent to that project complies completely with the national standards.

10. Failure to Perform Obligations: If, after receiving payment of any portion of the Bonus Award the State should fail to perform its obligations or continue the same under this Agreement in connection with any project, the State hereby agrees that, if, without good cause shown to the satisfaction of the Administrator, it fails to perform such obligations within 30 days after the date of mailing by the Administrator of written notice thereof, it will return to the Federal Government all payments heretofore made under this Agreement. In the event the State does not return all of such payments within a reasonable time, State hereby authorizes the Administrator to withhold from the State an amount equal to such payments out of any Federal-aid highway funds then due or that may thereafter become due to the State.

Notwithstanding any other provision in this section, if the State fails to perform any obligation of this Agreement and such failure is caused by a declaration of a court of competent jurisdiction or by a ruling of the Attorney General of said State that said State is without legal authority to perform said obligation under this contract, then the State will not be required to return to the Federal Government payments heretofore made under this Agreement unless and until sixty days have elapsed after the adjournment of the State legislative session next following such declaration or ruling.

11. Repayment Necessitated by Change in Zoning Within Connecticut Towns: If, after receiving payment of any portion of the Bonus Award, which payment is due to the control of advertising by State in an area within the limits of a Connecticut town as those limits existed on September 21, 1959, the status of any portion of said area is changed to a commercial or industrial zone, the national policy on advertising control shall no longer apply to the area or portion of area the status of which is changed, and State hereby agrees that it will repay so much of any bonus award made on account of the area to which the national policy no longer applies. In lieu of repayment, State hereby authorizes the Administrator to withhold from the State an amount equal to such payments out of any Federal-aid highway funds then due or that may thereafter become due to the State.

12. Effective Date: This Agreement shall become effective when executed only if it be signed on behalf of both the State and the Administrator prior to July 1, 1961.

IN WITNESS WHEREOF the State has caused this Agreement to be duly executed in its behalf, and the Administrator has likewise caused the same to be duly executed in his behalf, as of the dates specified below.

WITNESSES:

Sarah Yagoobian

Adam F. Knurek

STATE OF CONNECTICUT

BY Howard S. Ives (SEAL)
Howard S. Ives
State Highway Commissioner
Date: June 20, 1961

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS

BY R. M. Whitton
Federal Highway Administrator

Date: June 23, 1961

APPROVED AS TO FORM:

Albert L. Coles
Attorney General

Date: JUN 21 1961

APPROVED BY:

George J. Conkling
Commissioner of Finance & Control

Date: JUN 20 1961

APPENDIX D. DELAWARE PLAN FOR CONTROLLING OUTDOOR ADVERTISING

PLAN FOR CONTROLLING OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS IN THE STATE OF DELAWARE

Chapter 11 of Title 17 of the Delaware Code, as amended June 16, 1961, was enacted by the General Assembly of the State of Delaware for the express purpose, inter alia, of providing a statutory basis for the Regulation of Outdoor Advertising in Areas of this State Adjacent to the Interstate System, consistent with the national policy declared by Congress in Section 131 of Title 23 ("Highways") of the United States Code. Section 1103 of said Chapter directs that the State Highway Department shall enforce the provisions of the Chapter and make, publish and enforce regulations for the proper control and restriction of Outdoor Advertising signs, displays and devices. That Section also directs that the regulations promulgated by the State Highway Department, whenever applicable to Outdoor Advertising signs, displays and devices in areas adjacent to the Interstate System, shall conform to the National Standards for the Regulation by States of Outdoor Advertising, promulgated by the Department of Commerce on November 10, 1958, together with any amendments or substitute standards adopted by the federal authority supervising the grant of federal aid for highway purposes. Section 1128 of said Chapter authorizes the State Highway Department to enter into agreements with the Secretary of Commerce of the United States as provided in Section 131 of Title 23 ("Highways") of the United States Code

and to take action in the name of the State of Delaware to comply with the terms of such agreement.

Chapter 11 of Title 17 of the Delaware Code, as amended June 16, 1961, insofar as said Chapter relates to protected areas as that term is defined in Section 1102(b) thereof, is hereby made a part of this Plan. A copy of said Chapter is attached hereto as Appendix A.

On June 7, 1961, the State Highway Department adopted a resolution, relating to Regulations for the Control of Outdoor Advertising in Areas Adjacent to Highways of the Interstate System within the State of Delaware.

An excerpt from the Minutes of this Meeting of the State Highway Department relating to these regulations is attached hereto as Appendix B and made a part of this Plan.

This resolution provides for the administration and enforcement of these regulations by the Director of Operations of the State Highway Department or by such other person or persons as he shall designate to perform these duties.

The approximate location of that portion of the National System of Interstate and Defense Highways within the State of Delaware has been indicated on the appropriate maps prepared by the State Highway Department and dated April 15, 1960. Prints of these maps, showing these approximate locations of the Interstate Highways, have been color coded to indicate those sections of the system that are covered by the terms of the agreement of which this Plan is a part. Copies

of these maps are attached hereto as Appendix C and made a part of this Plan.

This Plan, upon approval by the Administrator, will become a part of the agreement. It is understood and agreed between the parties hereto that the State may, from time to time, submit additions and amendments to this Plan. If approved by the Administrator such additions and/or amendments shall be incorporated in and become a part of the agreement.

The State's Plan For Controlling Outdoor Advertising In Areas Adjacent To The National System Of Interstate And Defense Highways, as herein set forth, is signed for the purpose of identification by the Director of Operations of the State Highway Department for the State of Delaware.

Director of Operations

APPENDIX E. WISCONSIN APPLICATION FOR PERMIT

S.H.C. Form No. 700

STATE HIGHWAY COMMISSION OF WISCONSIN
APPLICATION FOR PERMIT FOR OUTDOOR ADVERTISING SIGN
NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS
(Submit in Triplicate)

The undersigned applicant hereby requests permission to erect, and/or maintain an advertising sign within the zone of regulation of an interstate highway as prescribed by Sec. 84.30 of the Wisconsin Statutes.

SIGN LOCATION:

Interstate Highway No._____; _____ County; Town of _____

Along the _____side of the highway _____ miles _____ of _____

_____ in the _____ Sec._____ Tn._____ North, R_____

Give precise description of location to nearest land division line, or property line,

or lot and block: _____

SIGN DESCRIPTION: Message or objects to be portrayed, color and illuminating scheme, and position of sign face relative to highway will be as indicated on the completely dimensioned 8½" x 11" drawing of the sign as attached hereto. (Separate applications to be submitted for each sign face)

CLASS OF SIGN: As defined by Sec. 84.30(3), Wis. Stat., this application is for:

☐ On-Premise Sign (Class b) ☐ Other (Class c, d, or e)

If Class (c) or (d) the distance between sign and place advertised is _____ air miles. Precise location of place advertised is _____

CONSENT OF PROPERTY OWNER:

The applicant will make his own arrangements for the erection and maintenance of the proposed sign with the landowners or tenants. Proof of the property owner's consent is required and must be attached to this application.

PERMIT FEE: THE FEE SHALL NOT BE SUBMITTED WITH THE APPLICATION. The successful applicant will be notified of the proper fee which shall be paid prior to issuance of sign permit.

SIGNATURE _____(Applicant)

_____ Address

_____

DO NOT WRITE BELOW THIS LINE

PERMIT FOR OUTDOOR ADVERTISING SIGN
NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

Whereas the location described in the foregoing application is eligible for a sign permit, and the proper fee of $_____ having been paid, a permit for said sign is hereby granted, covering the period from this date to March 31, 19___, subject to the conditions of Section 84.30, Wisconsin Statutes, Chapter Hy 19 of Wisconsin Administrative Code, and the following special conditions.

1. Sign to be placed _____ feet _____ of _____ right of way line.
2. Attached sign identification tag to be affixed to sign.

Access from the Interstate highway for the erection, maintenance or repair of the sign authorized hereunder is expressly prohibited.

Application Received _____
Sign Area _____ Sq. Ft.
Fee Paid $_____
Permit and Tag No._____
Interstate Highway No._____
County _____

APPROVED:
STATE HIGHWAY COMMISSION OF WISCONSIN
Date _____
By _____
Engineer of Maintenance